No. 879

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VOLUME I.

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FILED
MAR 27 1958
JOHN T. FEY, Clerk

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS

FIFTH CIRCUIT.

No. 16,624

LEWIS THURSTON ANDERSON and CLYDE VELMA ANDERSON, LEWIS THURSTON ANDERSON,

Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petitions for Review of Decisions of The Tax Court of the United States, (District of Georgia).

(ORIGINAL RECORD RECEIVED APR. 3/57.)

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DOCKET ENTRIES.

LEWIS THURSTON ANDERSON AND CLYDE VELMA ANDERSON,

Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Appearances:

For Petitioners: Edward C. Cushman, Jr., L. Eugene McNatt, Esq., Thomas R. Spillane, CPA.

For Respondent: Thomas E. Tyre, Esq., Herman Wolff, Jr., Esq.

DOCKET No. 35385.

1951

June 22—Petition received and filed. Taxpayer notified. Fee paid.

June 26—Copy of petition served on General Counsel.

June 22—Request for Circuit hearing in Augusta, Ga. filed by taxpayer. 7/5/51—Granted to Atlanta, Ga.

Aug. 23—Answer filed by General Counsel.

Aug. 24—Copy of answer served on taxpayer, Atlanta, Ga.

Oct. 9—Reply to answer filed by petitioner—Leave granted to file late. Copy served.

1952

July 25—Hearing set September 22, 1952, Atlanta, Ga.

July 31—Motion to change place of hearing to Columbia, S. C. filed by petitioner.

July 31—Motion to change place of hearing granted.

1954

June 22—Hearing set September 20, 1954, Columbia, S. C.

Sept. 20—Hearing had before Judge Opper on petitioner's motion to amend petition, and on petitioner's oral motion to continue generally, motions granted. Motion to amend and amended petition—copy served, and appearances of L. Eugene McNatt and Thomas R. Spillane, filed at hearing.

Sept. 20—Order that the motion is granted and proceeding is continued generally at Columbia, S. C., entered.

Oct. 4—Transcript of Hearing 9/20/54 filed.

Nov. 19—Answer to amended petition, filed by General Counsel. 11/22/54—Copy served.

Dec. 30—Reply to answer to amended petition filed by taxpayer—Copy served.

1955

June 30—Hearing set Oct. 10, 1955—Columbia, S. C.

Aug. 29—Motion for leave to file amendment to answer to amended petition, amendment to answer to amended petition lodged, filed by General Counsel. 8/30/55—Granted.

Sept. 9—Application for order to take depositions of Mary Pool Anderson, filed by respondent.

Sept. 19—Petitioner's motion to deny and to quash application to take depositions, filed.

1955

Sept. 20—Notice of hearing set 9/28/55—Wash. D. C. on respondent's application to take deposition and on petitioner's objections.

Sept. 20—Copy of motion and notice of hearing served on General Counsel.

Sept. 28—Hearing had before Judge Murdock on respondent's application to take depositions; and Petitioner's objections thereto.

Sept. 28—Order that respondent's application to take deposition of Mary Pool Anderson, is denied, entered.

Oct. 10—Reply to amendment to answer, filed by taxpayer. Copy served.

Oct. 11, 12, 13, 14, 17, 19—Hearing had before Judge Atkins on the merits, on petitioner's oral motion to consolidate with Docket No. 35386, Order, Granted; and Respondent's oral motion to amend pleading to conform to proof. Granted. Order, Record to be left open for 3 weeks for substitution of Exhibits. Briefs due 2/14/56; Replies due 3/30/56.

Oct. 31—Transcript of hearing 10/11/55 filed.

Oct. 31—Transcript of hearing 10/12/55 filed.

Oct. 31—Transcript of hearing 10/13/55 filed.

Oct. 31—Transcript of hearing 10/14/55 filed.

Nov. 7—Joint motion for leave to file Stipulation of Facts filed. Stipulation of Facts lodged.

Nov. 8—Transcript of hearing 10/17/55 filed.

Nov. 8—Transcript of hearing 10/18/55 filed.

Nov. 14—Joint motion for leave to file Stipulation of Facts, granted, Stipulation of Facts filed.

1956

Feb. 13—Brief filed by taxpayer. Served 2/27/56.

Feb. 13—Motion for extension to Feb. 24, 1956 to file brief filed by respondent. 2/14/56—Granted.

Feb. 24—Briefs filed by Respondent. Served 2/26/56.

Apr. 2—Reply Brief filed by Petitioner. Served 4/2/56.

Apr. 9—Reply Brief filed by Respondent. Served 4/10/56.

July 31—Order that respondent's objections to admission of exhibits are overruled, further ordered that petitioner's exhibits Nos. 21 and 28 are received in evidence, entered. Served 8/2/56.

July 31—Memorandum Findings of Fact and Opinion filed, Judge Atkins, Decision will be entered under Rule 50. Served 8/2/56.

Dec. 11—Agreed Computation filed.

Dec. 13—Decision entered, Judge Atkins, Div. 7. Served 12/14/56.

1957

Feb. 26—Petition for Review by U. S. Court of Appeals for the Fifth Circuit with assignments of error filed by petitioner.

Feb. 26—Notice of Appeal to U. S. Court of Appeals, Fifth Circuit, with certificate of service attached, filed by petitioner.

Mar. 11—Certified copy of order of Court of Appeals, Fifth Circuit, consolidating dockets 35385 and 35386, filed.

Mar. 11—Certified copy of order of Court of Appeals, Fifth Circuit, directing transmission of original exhibits 10 days before hearing and inclusion in transcript of record of original official report of proceedings in lieu of a narrative statement of evidence, filed.

Mar. 13—Designation of contents of record on review with certificate of service attached, filed.

DOCKET ENTRIES.

Lewis Thurston Anderson, Petitioner,
vs. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Appearances:

For Petitioner: Edward C. Cushman, Jr., Esq., L. Eugene McNatt, Esq., Thomas R. Spillane, C. P. A.

For Respondent: Thomas E. Tyre, Esq., Herman Wolff, Jr., Esq.

1951

June 22—Petition received and filed. Taxpayer notified. Fee paid.

June 26—Copy of petition served on General Counsel.

June 22—Request for Circuit hearing in Augusta, Ga. filed by taxpayer. 7/5/51—Granted to Atlanta, Ga.

Aug. 23—Answer filed by General Counsel.

Aug. 24—Copy of answer served on taxpayer—Atlanta, Ga.

Oct. 9—Reply to answer filed by petitioner—Leave to file late—Granted. Copy served.

1952

July 25—Hearing set Sept. 22, 1952—Atlanta, Ga.

July 31—Motion to change place of hearing to Columbia, S. C., filed by petitioner.

July 31—Motion to change place of hearing granted.

1954

June 22—Hearing set Sept. 20, 1954—Columbia, S. C.

Sept. 20—Hearing had before Judge Opper on petitioner's motion to amend petition, and on petitioner's oral motion to continue generally, Motions granted. Motion to amend and amended petition—copy served, and appearances of L. Eugene McNatt and Thomas R. Spillane, filed at hearing.

Sept. 20—Order that the motion is granted and proceeding is continued generally at Columbia, S. C., entered.

Oct. 4—Transcript of hearing 9/20/54 filed.

Nov. 19—Answer to amended petition filed by General Counsel. 11/22/54—copy served.

Dec. 30—Reply to answer to amended petition filed by taxpayer. Copy served.

1955

June 30—Hearing set Oct. 10, 1955—Columbia, S. C.

Aug. 29—Motion for leave to file amendment to answer to amended petition, amendment to answer to amended petition lodged, filed by General Counsel. 8/30/55—Granted.

Sept. 9—Application for order to take depositions of Mary Pool Anderson, filed by General Counsel.

Sept. 19—Petitioner's motion to deny and to quash application to take depositions, filed. Copy served.

Sept. 20—Notice of hearing set 9/28/55—Wash. D. C. on respondent's application to take deposition and on petitioner's objections. Copy served.

Sept. 28—Hearing had before Judge Murdock on respondent's application to take depositions; and petitioner's objections thereto.

1955

Sept. 28—Order that respondent's application to take deposition of Mary Pool Anderson, is denied, entered.

Oct. 10—Reply to amendment to answer, filed by taxpayer. Copy served.

Oct. 11, 12, 13, 14, 17, 19—Hearing had before Judge Atkins on the merits, on petitioner's oral motion to consolidate with Docket No. 35385, and oral motion of respondent to amend pleading to conform to proof. Order, Motions granted; Order—Record to be left open for 3 weeks for substitution of Exhibits; Briefs due 2/14/56; Replies due 3/30/56.

Oct. 31—Transcript of Hearing 10/11/55 filed.

Oct. 31—Transcript of Hearing 10/12/55 filed.

Oct. 31—Transcript of Hearing 10/31/55 filed.

Oct. 31—Transcript of Hearing 10/14/55 filed

Nov. 7—Joint Motion for leave to file Stipulation of Facts filed. Stipulation of Facts lodged.

Nov. 8—Transcript of Hearing 10/17/55 filed.

Nov. 8—Transcript of Hearing 10/18/55 filed.

Nov. 14—Joint Motion for leave to file stipulation of facts granted, Stipulation of facts filed.

1956

Feb. 13—Brief filed by taxpayer. Served 2/27/56.

Feb. 13—Motion for extension to Feb. 24, 1956 to file brief, filed by Respondent. 2/14/56—Granted.

Feb. 24—Brief filed by respondent.

Apr. 2—Reply Brief filed by petitioner. 4/2/56—Served.

Apr. 9—Reply Brief filed by respondent. 4/10/56—Served.

July 31—Order that respondent's objections to submission of exhibits are overruled, further ordered that petitioner's exhibits Nos. 21 and 28 are received in evidence, entered

1956

July 31—Memorandum findings of fact and opinion filed, Judge Atkins, Decision will be entered under Rule 50.

Dec. 11—Agreed computation filed.

Dec. 13—Decision entered, Judge Atkins, Div. 7. Served 12/14/56.

1957

Feb. 26—Stipulation agreeing to review by U. S. Court of Appeals, 5th Circuit, filed.

Feb. 26—Petition for review by U. S. Court of Appeals, Fifth Circuit, with assignments of error filed by petitioner.

Feb. 26—Notice of appeal to U. S. Court of Appeals, 5th Circuit with certificate of service attached, filed by petitioner.

Mar. 11—Certified copy of order of Court of Appeals, Fifth Circuit, consolidating dockets 35385 and 35386, filed.

Mar. 11—Certified copy of order of Court of Appeals, Fifth Circuit, directing transmission of original exhibits 10 days before hearing and inclusion in transcript of record of original official report of proceeding in lieu of a narrative statement of evidence, filed.

Mar. 13—Designation of contents of record on review with certificate of service attached, filed.

PETITION.

Filed Jun. 22, 1951.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson,
Petitioners,
v. Docket No. 35385.
Commissioner of Internal Revenue, Respondent.

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols ITA:SN:JPH) dated March 28, 1951, and as a basis of their proceeding allege as follows:

1. The petitioners are individuals with residence at 300 Sand Bar Ferry Road, Augusta, Georgia. The petitioners are husband and wife and for the taxable year 1948 filed a joint return. The return for the period here involved was filed with the collector for the District of Georgia.

2. The notice of deficiency (a copy which is attached and marked Exhibit A) was mailed to the petitioners on March 28, 1951.

3. The deficiency as determined by the Commissioner is in income taxes for the calendar year 1948 in the amount of $10,968.96 with a penalty of $5,484.48, making a total of $16,453.44, of which amount $8,386.36 is in controversy.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erroneously determined the correct adjusted gross income of petitioners to be $42,839.02, for the year 1948; whereas, petitioners allege, on information and belief, that their correct adjusted gross income was approximately $32,466.81.

(b) From the face of the notice of deficiency, it is apparent and petitioners therefore allege, that the Commissioner in determining the petitioners' net taxable income erred in failing to allow petitioners the benefit of the capital gains provisions set forth in Section 117, Internal Revenue Code for the taxable year 1948.

(c) The Commissioner has erroneously added a penalty to the deficiency in the amount of $5,484.48. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioners contend that there was no intent to evade the payment of income taxes for the year 1948.

5. The facts upon which the petitioners rely as the basis of this proceeding are as follows:

(a) Petitioners had income for the taxable year 1948 from the following sources: dividends, $1,489.82, net rental income $2,396.67, interest from real estate loans $8,575.42, other interest income $521.50, income from the sale of real estate $19,483.40, making a total of $32,466.81 for the year 1948.

(b) During the taxable year 1948 and for several years prior thereto, petitioner, Lewis Thurston Anderson, maintained as an investment certain real estate. The petitioner, Lewis Thurston Anderson, sold this real estate maintained as aforesaid during the year 1948. From the disposal of this property petitioner realized taxable gain in excess of other capital losses. This property so disposed of during the year 1948 had been held by petitioner, Lewis Thurston Anderson for a period of more than six months prior to the date of disposal.

6. The full given names and surnames of petitioners are as set forth in the caption of this proceeding, and it is to be noted that petitioners are one and the same persons with the individuals to whom the notice of deficiency hereinbefore referred to was sent, although said notice of deficiency was addressed to Mr. and Mrs. L. T. Anderson, 300 Sand Bar Ferry Road, Augusta, Georgia.

Wherefore, petitioners pray that this Court may hear the proceeding and determine that the deficiency due from the petitioners for the year 1948 should not be in excess of $8,067.08, and give such other and further relief as in the premises the Court may deem fit and proper.

(S.) LEWIS THURSTON ANDERSON,
(S.) CLYDE VELMA ANDERSON,
Petitioners.

Lewis Thurston Anderson,
300 Sand Bar Ferry Road,
Augusta, Georgia.
Clyde Velma Anderson,
300 Sand Bar Ferry Road,
Augusta, Georgia.

(S.) EDWARD C. CUSHMAN, JR..
Counsel for Petitioners.

Edward C. Cushman, Jr.,
Johnson Building,
800 Laurens (Main) Street,
Aiken, South Carolina.

State of South Carolina,
County of Aiken.

Lewis Thurston Anderson and Clyde Velma Anderson, being each duly sworn, say that they are the petitioners above named: that they have read the foregoing petition or had the same read to them, and are familiar with the statements contained therein, and that the statements contained therein are true, except those sated to be upon information and belief, and that those they believe to be true.

(S.) LEWIS THURSTON ANDERSON,
(S.) CLYDE VELMA ANDERSON.

Subscribed and sworn to before me this 21st day of June A. D. 1951.

(S.) J. C. BUSBEE,
(Seal) Notary Public of South Carolina.

My Commission expires at the pleasure of the Governor.

EXHIBIT A.

(Copy.)

U. S. Treasury Department

Office of Internal Revenue Agent in Charge
Room 427, Federal Annex Building
Post Office Box 4025
Atlanta 2, Georgia

Internal Revenue Service
In Replying Refer To:
ITA:SN:JPH

March 28, 1951

Mr. L. T. Anderson and Mrs. L. T. Anderson
300 Sand Bar Ferry Road
Augusta, Georgia

Dear Mr. and Mrs. Anderson:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1948 discloses a deficiency of $10,968.96 and penalty of $5,484.48, as shown in the attached statement.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia at the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Atlanta 2,

Georgia, for the attention of ITA:SN:JPH. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,
GEO. J. SCHOENEMAN,
Commissioner,
By (S.) WILLIAM BRUSSE,
Internal Revenue Agent In Charge.

ors
Enclosures:
Statement
Form of Waiver

Statement

Mr. L. T. Anderson and Mrs. L. T. Anderson
300 Sand Bar Ferry Road
Augusta, Georgia.

Tax Liability for the Taxable Year Ended December 31, 1948

Income Tax	Deficiency	50% Penalty
1948	$10,968.96	$ 5,484.48

The determination of your income tax and penalty liability has been made upon the basis of information on file in this office.

The 50 per cent penalty shown herein has been asserted in accordance with the provisions of Section 293(b) of the Internal Revenue Code.

Taxable Year Ended December 31, 1948

Adjustments to Net Income

Net income as disclosed by return	$12,019.79
Unallowable deductions and additional income:	
(a) Understatement of income	29,819.23
Net income adjusted	$41,839.02

Taxable Year Ended December 31, 1948

Explanation of Adjustments

(a) It is held that the net income reported on your return filed for the taxable year ended December 31, 1948, was understated by $29,819.23, as determined from increase in your net worth and other data available, as follows:

Net worth at December 31, 1948	$266,659.88
Net worth at December 31, 1947	227,145.86
Increase in net worth	$ 39,514.02
Add: Personal and living expenses	3,000.00
50% of net long-term capital loss from sale of securities—not deductible	325.00
Correct adjusted gross income	$ 42,839.02
Less: Standard Deduction	1,000.00
Correct taxable net income	$ 41,839.02
Taxable net income per return	12,019.79
Understatement of income	$ 29,819.23

Taxable Year Ended December 31, 1948

Computation of Tax

Net income adjusted	$41,839.02
Less: Exemptions (2 x $600)	1,200.00
Balance subject to tax	$40,639.02
One-half of $40,639.02	$20,319.51
Tentative tax on $20,319.51	$ 7,438.93

Tax Reduction: Balance of Tentative Tax

	Rate	Amount
$0—$400 at	17%	$ 68.00
$7,038.93 at	12%	844.67
Total tax reduction		912.67
Combined normal tax and surtax on $20,319.51		$ 6,526.26
Combined normal tax and surtax on $40,639.02 $6,526.26 multiplied by 2		$13,052.52
Correct income tax liability		$13,052.52
Income tax liability disclosed by return		2,083.56
Deficiency in income tax		$10,968.96
Penalty—50% of $10,968.96		$ 5,484.48

Form 870
U. S. Treasury Department
Internal Revenue Service
(Revised Nov. 1949)

ITA:SN:JPH—Atlanta Division

Mr. and Mrs. L. T. Anderson

Date Received .....

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax

Pursuant to the provisions of section 272 (d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, and restrictions provided in section 272 (a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax:

taxable year ended December 31, 1948 income tax in the sum of	$10,968.96
taxable year ended December 31, 1948, 50% penalty	5,484.48
taxable year ended ..... income tax in the sum of	$.....
taxable year ended ..... income tax in the sum of	$.....
taxable year ended ..... (declared ....value) excess-profits tax in the sum of ..	$.....
taxable year ended ..... excess profits tax in the sum of	$.....
taxable year ended ..... in the sum of	$.....
amounting to the total sum of (Deficiency and Penalty)	$16,453.44

together with interest thereon as provided by law.

.....
(Taxpayer)

.....
(Seal) (Taxpayer)

.....
(Address)

By ....
(Date)

Note—The execution and filing of this Waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a Joint Return of a Husband and Wife was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

*U. S. Government Office,
16-8466-2.

ANSWER.

Filed Aug. 23, 1951.

Received Aug. 23, 1951.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson, Petitioners,

v. Docket No. 35385.

Commissioner of Internal Revenue, Respondent.

Comes now the respondent, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, alleges, avers and denies as follows:

1. and 2. Admits the allegations set forth in paragraphs 1 and 2 of the petition.

3. Admits that the deficiency as determined by the Commissioner is in income taxes for the calendar year 1948 in the amount of $10,968.96 with a penalty of $5,484.48, making a total of $16,453.44. Denies the remaining allegations set forth in paragraph 3 of the petition.

4. (a) to (c) Denies the allegations of error set forth in paragraph 4, subparagraphs (a) to (c), inclusive, of the petition.

5. (a) and (b) Denies the allegations set forth in paragraph 5, subparagraphs (a) and (b), of the petition.

6. Admits the allegations set forth in paragraph 6 of the petition.

7. Denies generally and specifically each and every allegation set forth in the petition not hereinbefore admitted, qualified, or denied.

Further answering the petition the respondent affirmatively alleges, avers and asserts as follows:

8. That the petitioners are liable for the 50% penalty prescribed by section 293 (b) of the Internal Revenue Code on the amount of their deficiency for the taxable year 1948.

9. In support thereof the respondent relies upon the following facts:

(a) The petitioners, with wilful intent to evade Federal income taxes filed a false and fraudulent Federal income tax return for the calendar year 1948, disclosing a net income of $12,019.79, whereas, their correct net income for said year was $41,839.02.

(b) The petitioners in said year 1948 received miscellanoues income in the amount of $29,819.23 which they, with wilful intent, fraudulently failed to report on their Federal income tax return for that year.

Wherefore, it is prayed that the appeal be denied and that the deficiencies and penalties as set forth in the notice of deficiency be in all respects approved.

(Signed) CHARLES OLIPHANT, F.V.H.,
(Charles Oliphant),
Chief Counsel, Bureau of Internal Revenue.

Of Counsel:
FRANK W. THOMPSON, JR.,
Division Counsel,
WILLIAM W. OLIVER,
Special Attorney,
Bureau of Internal Revenue.

WWO:ftm 8/15/51.

REPLY.

Filed Oct. 9, 1951.

Received Oct. 9, 1951.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson, Petitioners,
v. Docket No. 35385
Commissioner of Internal Revenue, Respondent.

Leave to file Granted. Judge (Signed) John W. Kern.

The above named Petitioners, for reply to the allegations affirmatively set out by the respondent in his Answer, admit and deny as follows:

8. Deny in its entirety paragraph 8 of respondent's Answer; deny specifically and generally, each and every allegation in paragraph 8 of said Answer contained.

9 (a). Deny in its entirety paragraph 9 sub-paragraph (a) of respondent's Answer; deny specifically and generally each and every allegation in paragraph 9 sub-paragraph (a) of said Answer contained; the filing of a false and fraudulent income tax return for the calendar year 1948; deny any intent to evade Federal income taxes for the calendar year 1948 by filing a false and fraudulent income tax return for said year disclosing a net income of $12,019.79 instead of an allegedly correct income for said year in the amount of $41,839.02; deny correct income for said year to be in the amount of $41,839.02; allege that any omission of taxable income by Petitioners from their Federal income tax return for the calendar ear 1948 was due to honest error, mistake, inadvertence, and/or misapprehension of applicable Federal income tax law.

9 (b). Deny in its entirey paragraph 9 sub-paragraph (b) of respondent's Answer; deny specifically and generally each and every allegation in paragraph 9 sub-paragraph (b) of said Answer contained; deny the receipt of additional miscellaneous income in the amount of $29,819.23 for the calendar year 1948; deny any intent to defeat and evade the payment of any tax by fraudulently failing to report on their Federal income tax return for the year 1948 the alleged amount of $29,819.23 in additional income; allege that failure to report any income other than as shown on their tax return was due to honest mistake, error, inadvertence and bad advice.

Wherefore, it is prayed that the affirmative relief requested by the respondent in his Answer be denied.

(S.) EDWARD C. CUSHMAN, JR.,
Counsel for Petitioners.

Edward C. Cushman, Jr.,
Johnson Building,
800 Laurens (Main) Street,
Aiken, South Carolina.

AMENDED PETITION.

Filed at Hearing Sep. 20, 1954.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson,
Petitioners,
vs. Docket No. 35385.
Commissioner of Internal Revenue, Respondent.

The above named Petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency dated March 28th, 1951 and as a basis of this proceeding alleges as follows:

I. The Petitioners are husband and wife, with residence at 400 Colorado Road, Augusta, Georgia. They filed a joint return for the year 1948 with the Collector of Internal Revenue for the District of Georgia.

II. The Notice of Deficiency (copy, marked Exhibit A, attached to original Petition) was mailed to Petitioners on March 28th, 1951.

III. The Respondent has determined a deficiency in tax with penalties as follows:

Year	Deficiency	Penalty	Total
1948	$10,968.96	$ 5,484.48	$16,453.44

IV. Respondent erred in asserting the 50% penalty.

V. The tax deficiencies and penalties asserted in the Notice of Deficiency total $16,453.44, substantially all of which is on controversy.

VI. The Respondent failed to allow the Installment Method for 1948 sales of real property.

VII. The Respondent erred in failing to allow the Petitioners the benefits of Section 117 (Capital Gains) for each year on real estate sold that was rented property over the years.

VIII. The Respondent erred in failing to allow the full costs of the properties sold.

IX. The Respondent erred in failing to allow all liabilities outstanding at the end of each year.

X. The Respondent erred in changing the Reserve for Depreciation in all years and effecting 1948.

XI. The Respondent erred in including in the net worth at the beginning and end of 1948, real estate notes at their face value.

XII. The Respondent erred in failing to include cash on hand in the net worth statement.

XIII. The Respondent erred in including in net worth assets that did not belong to the Petitioners in this year.

XIV. The Respondent erred in including in net worth, both the real estate sold, and the notes received as payment on the specific sale.

XV. The Respondent erred in failing to allow a deduction for State Income Taxes based upon the deficiency.

XVI. The Respondent erred in determining the taxable income for 1948 to be $41,839.02 and the tax and penalties totaling $16,453.44.

The facts upon which the Petitioners rely as the basis for this proceeding, are as follows:

XVII. The Petitioners filed a 1948 Income Tax Return on the due date or within the time allowed by any extension. This return reported income from real estate sales for 1948 on the Installment Method. It also included under Installment Method collections in 1942 and 1946 real estate sales. The initial payments were less than 30%. The notes received had no greater value than the property behind the notes as security.

XVIII. The Petitioners had shown the alleged cost of the properties on the depreciation schedule over the years.

XVIIIa. The Petitioners had over the years purchased and built houses for investment as rental properties, and on those properties that qualified, the Petitioners are entitled to the capital gain computation under Section 117 of the Internal Revenue Code.

XIX. The Petitioners are one and the same persons to whom the Notice of Deficiency was mailed, although the residence has been changed to 400 Colorado Road, Augusta, Georgia.

XX. Wherefore, Petitioners pray that this Honorable Court hear this proceeding and determine:

(a) That the Petitioners have not filed a false and fraudulent 1948 Income Tax Return, and

(b) That the notes received on Real estate sales had a value equal to the cost of the property securing said note, and

(c) That the Petitioners are entitled to the benefit of the Installment Sales Method, and

(d) That the Petitioners are entitled to the benefit of the Capital Gain provisions of the Law on the rental property that qualifies, and

(e) Grant such other and further relief as to this Honorable Court may seem just and proper.

Respectfully submitted,

(S.) EDWARD C. CUSHMAN, JR.,

(Edward C. Cushman, Jr.),

Counsel for Petitioners.

Aiken, South Carolina.
State of South Carolina,
County of Aiken.

Lewis Thurston Anderson and Clyde Velma Anderson, being each duly sworn, say that they are the Petitioners above named; that they have read the foregoing Petition or had the same read to them, and are familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those they believe to be true.

(S.) LEWIS THURSTON ANDERSON,
(S.) CLYDE VELMA ANDERSON.

Subscribed and sworn to before me this 15th day of September, A. D. 1954.

(S.) H. R. ASKKURST, (L.S.)
(Seal) Notary Public of South Carolina.

My commission expires at the pleasure of the Governor.

ANSWER TO AMENDED PETITION.

Filed Nov. 19, 1954.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson, Petitioners,

v. Docket No. 35385.

Commissioner of Internal Revenue, Respondent.

Comes now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the amended petition filed herein admits, alleges, avers, and denies as follows:

I, II, and III. Admits the allegations set forth in paragraphs I, II, and III of the amended petition.

IV. Denies the error alleged in paragraph IV of the amended petition.

V. Admits that the tax deficiencies and penalties asserted in the notice of deficiency total $16,453.44. Denies the remainder of paragraph V of the amended petition.

VI. to XVI. Denies the allegations of error and fact set forth in paragraphs VI to XVI, inclusive, of the amended petition.

XVII to XVIII. Denies the allegations set forth in paragraphs VII to XVIII, inclusive, and all subparagraphs thereunder of the amended petition.

XIX. Admits the allegations set forth in paragraph XIX of the amended petition.

XX. Neither admits nor denies the allegations set forth in paragraph XX of the amended petition inasmuch as no pleadings are required with respect to petitioners' prayer.

XXI. Denies generally and specifically each and every allegation set forth in the amended petition not hereinbefore admitted, qualified, or denied.

Further answering the amended petition filed herein, respondent affirmatively alleges, avers, and asserts as follows:

XXII. The petitioners are liable for the 50% penalty prescribed by section 23(b), Internal Revenue Code, in connection with their liability for income taxes for the taxable year 1948.

XXIII. The respondent relies upon the following facts and affirmatively alleges:

(a) During the taxable year 1948 the petitioners resided at Augusta, Georgia where Mr. Anderson was engaged in real estate activities and other miscellaneous activities.

(b) The petitioners, with wilful intent to evade Federal income taxes, filed a false and fraudulent income tax return for the taxable year 1948. For this taxable year the petitioners' correct taxable income and their taxable income as disclosed by said false and fraudulent return were in the respective amounts of $41,839.02 and $12,019.79.

(c) For the taxable year 1948 the petitioners did not maintain books of account or other records which adequately reflect or disclose the correct taxable income which they received from the various business activities in which they were engaged.

(d) In the notice of deficiency respondent has determined the petitioners' correct taxable income for the taxable year 1948 by the increase in net worth plus personal expenditures method, and in making this determination respondent has utilized all records, memoranda, and other sources of information that were available.

(e) The following schedule reflects petitioners' correct taxable income for the taxable year 1948:

	1947	1948
Assets		
Cash in Banks:		
C & S Natl. Bank, Augusta, Ga...	$ 1,082.91	$ 2,379.74
Ga. R.R. Bank & Trust Co., Augusta, Ga.	760.77	1,201.59
Security Deeds & Notes recorded in following counties:		
Aiken, S.C.	36,129.31	33,111.07
Richmond, Ga.	105,913.24	146,533.49
Jefferson, Ga.	107.00	—
Real Estate Holdings situated & recorded in following counties:		
Aiken, S.C.	6,481.60	6,389.63
McCormick, S.C.	1,225.00	1,225.00
Richmond, Ga.	30,528.67	35,981.75
Jefferson, Ga.	2,300.00	2,300.00

Construction in progress or finished for sales (3 houses @ $4,000.00 each)	12,000.00	—
Investments in securities—Stocks and Bonds	41,697.20	44,346.45
Total Assets	$238,225.70	$273,468.72
Liabilities		
Notes Payable:		
C & S Natl. Bank, August, Ga.	$ 2,025.00	—
Ga. R.R. Bank & Trust Co., Augusta, Ga.	2,025.00	—
Reserve for Depreciation:		
Richmond County	4,103.17	$ 4,582.17
Jefferson County	1,140.00	1,200.00
Aiken County	706.67	786.67
Richmond County	1,080.00	240.00
Total Liabilities	$ 11,079.84	$ 6,808.84
Net Worth	$227,145.86	$266,659.88
Deduct prior year	175,902.78	227,145.86
Net Increase	$ 51,243.08	$ 39,514.02
Add Personal Withdrawals	3,000.00	3,000.00
	$ 54,243.08	$ 42,514.02
Less: Nontaxable income sale of securities	589.08	(325.00)
	$ 53,654.00	$ 42,839.02
Less: Allowable contributions	—	—
Standard deduction	500.00	1,000.00
Taxable Net Income	$ 53,154.00	$ 41,839.02

(f) The increase in petitioners' net worth, plus amounts expended for nondeductible personal living expenses, and loss from the sale of properties, less the standard deduction and amounts disclosed as taxable incomes on their 1948 return, represents taxable income which petitioners omitted from said return with wilful intent to evade taxes.

(g) By reason of petitioners' failure to return their correct taxable income for the taxable year 1948, there are now due from petitioners deficiencies in income tax and penalties as set forth in the notice of deficiency, a copy of which is attached to the original petition and which is incorporated herein by reference and made a part hereof the same as if set forth in full. A part of the deficiency as set out in the notice of deficiency is due to fraud on the part of petitioners with intent to evade taxes.

Wherefore, it is prayed that the appeal be denied and that the respondent's determination be in all respects approved.

(Signed) DANIEL A. TAYLOR, FVH,
(Daniel A. Taylor),
Chief Counsel, Internal Revenue Service.

Of Counsel:
WILLIAM H. LOEB,
Regional Counsel,
RALPH V. BRADBURY, JR.,
Special Attorney,
Internal Revenue Service,
Peachtree-Seventh Bldg.,
Atlanta 5, Georgia.
RVB/ejb 11/18/54.

REPLY.

Filed Dec. 30, 1954.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson,
Petitioners,
v. Docket No. 35385.
Commissioner of Internal Revenue, Respondent.

Now Come the petitioners, by their attorneys, and for reply to the respondent's answer to the amended petition filed in this proceeding admit, allege and deny as follows:

XXII. Deny the allegations of paragraph XXII of the answer to the amended petition.

XXIII. (a) through (g) Deny the allegations of paragraph XXIII of the answer to the amended petition and all sub-paragraphs thereunder.

Wherefore, petitioners pray that the answer be denied and that their appeal in all respects be sustained.

L. EUGENE McNATT,
(L. Eugene McNatt),
Attorney for Petitioners.
1345 Citizens & Southern Bank Bldg.,
Atlanta, Georgia.

Of Counsel:
EDWARD C. CUSHMAN,
Aiken, S. C.
THOMAS R. SPILLANE, CPA,
Savannah Bank & Trust Bldg.,
Savannah, Georgia.

AMENDMENT TO ANSWER TO AMENDED PETITION.

Lodged Aug. 29, 1955.

Filed Aug. 30, 1955.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson, Petitioners,

v. Docket No. 35385.

Commissioner of Internal Revenue, Respondent.

Comes now the Commissioner of Internal Revenue by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, and amends his answer to amended petition by inserting after paragraph XXIII (g) the following:

XXIV. Respondent affirmatively claims under section 272(e), Internal Revenue Code of 1939, that for the taxable year 1948 the petitioner is liable for the additions to the tax as provided in section 294(d)(1)(A), Internal Revenue Code of 1939, relating to failure to file a declaration, and section 294(d)(2), Internal Revenue Code of 1939, relating to substantial underestimation of estimated tax, in the respective amounts of $1,305.24 and $783.15 or a total increase in deficiencies over the amount stated in the statutory notice of deficiency for the taxable year 1948 in the amount of $2,088.39.

XXV. In support thereof the respondent relies upon the following facts and affirmatively alleges:

(a) Correct tax liability per statutory notice..	$13,052.52
Estimated tax payable quarterly	$13,052.52
Due each installment	$ 3,263.13

Computation of penalties:

March 15 installment unpaid for more than 6 months at 10%	$326.31	
June 15 installment unpaid for more than 6 months at 10%	326.31	
Sept. 15 installment unpaid for more than 6 months at 10%	326.31	
Jan. 15, 1949 installment unpaid for more than 6 months at 10%—return filed August 15, 1949	326.31	
Addition to tax under Sec. 294(d)(1)(A), Internal Revenue Code of 1939		$ 1,305.24
Addition to tax under Sec. 294(d)(2), Internal Revenue Code of 1939, for underestimate of estimate tax (6% of $13,052.52)		$ 784.15

(b) On August 15, 1949 petitioners filed their joint 1948 income tax return, Form 1040, wherein they stated their net income for 1948 to be $12,019.70 and their tax liability to be $2,083.56.

(c) The respondent has determined that the petitioners had taxable net income for 1948 in the amount

of $41,839.02 and a correct income tax liability in the amount of $10,968.96.

(d) For the taxable year 1948, petitioners did not file a declaration of estimated tax as required by section 58(a), Internal Revenue Code of 1939, nor did they file an amendment of declaration as permitted under section 58(d), Internal Revenue Code of 1939.

(e) For the taxable year 1948, petitioners made no payments of estimated tax as required or permitted by section 59, Internal Revenue Code of 1939.

Wherefore, it is prayed that respondent's determination be in all respects approved and that the increased deficiencies resulting from the imposition of the additions of tax under section 294(d)(1)(A) and section 294(d)(2), Internal Revenue Code of 1939, over the amount shown in the notice of deficiency be approved.

JOHN POTTS BARNES, FVH,
(John Potts Barnes),
Chief Counsel, Internal Revenue Service.

Of Counsel:
WILLIAM H. LOEB,
Regional Counsel,
HERMAN WOLFF, JR.,
Special Attorney,
Internal Revenue Service,
Peachtree-Seventh Building,
Atlanta 23, Georgia.

REPLY TO AMENDMENT TO ANSWER.

Filed Oct. 10, 1955.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson,
Petitioners,
v. Docket No. 35385.
Commissioner of Internal Revenue, Respondent.

Come Now the petitioners and for reply to respondent's amendment to the answer in this proceeding admit and deny as follows:

XXIV. Deny the allegations of paragraph XXIV of the Amendment to the answer.

XXV (a) through (e). Deny the allegations of paragraph XXV (a) through (e) of the amendment to the answer.

Wherefore, petitioners pray that the amendment to the answer be denied.

L. EUGENE McNATT,
(L. Eugene McNat).
1345 Citizens & Southern Bank Building,
Atlanta, Georgia.

Of Counsel:
E. C. CUSHMAN, JR.,
Aiken, S. C.
THOMAS R. SPILLANE, CPA,
Savannah, Georgia.

PETITION.

Filed Jun. 22, 1951.

The Tax Court of the United States.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols ITA:SN:JPH) dated March 28, 1951, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual with residence at 300 Sand Bar Ferry Road, Augusta, Georgia. The returns for the periods here involved were filed with the collector for the District of Georgia; except, that for the taxable year 1947, one of the periods here involved, no return has been filed.

2. The notice of deficiency (a copy which is attached and marked Exhibit A) was mailed to the petitioner on March 28, 1951.

3. The deficiencies as determined by the Commissioner are in income taxes and victory tax for the calendar years 1941, 1942, 1943, 1944, 1945, 1946, 1947 in the total amount of $78,513.77, with total penalties of $45,940.80, making an overall total of $124,454.57 of which approximately $92,317.29 is in dispute; all of which is more specifically set forth as follows:

Year	Deficiency	50% Penalty	25% Penalty	Total	Approximate Amount in Dispute
1941	$ 838.80	$ 419.40		$ 1,258.20	$ 1,258.20
1942	4,477.86	2,238.93		6,716.79	6,716.79
1943	4,757.51	2,360.94		7,118.45	7,118.45
1944	744.79	372.40		1,117.19	633.94
1945	23,415.04	11,776.16		35,191.20	28,502.95
1946	17,747.47	8,873.74		26,621.21	19,097.43
1947	26,532.30	13,266.15	$6,633.08	46,431.53	28,989.53
	$78,513.77	$39,307.72	$6,633.08	$124,454.57	$92,317.29

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) Without acquiescing as to the deficiency determination, and reserving the right to challenge the same, the petitioner alleges that the Commissioner erred in failing to determine that the assessment or collection of income tax for the year 1941 is barred by the Statute of Limitations.

(b) The Commissioner has erroneously added a penalty to the deficiency for 1941 in the amount of $419.40. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioner contends that there was no intent to evade payment of income taxes for the year 1941.

(c) Without acquiescing as to the deficiency determination and reserving the right to challenge the same, the petitioner alleges that the Commissioner erred in failing to determine that the assessment or collection of income tax for the year 1942 is barred by the Statute of Limitations.

(d) From the fact of the notice of deficiency, it is apparent, and petitioner therefore alleges, that the Commissioner in determining petitioner's net taxable income erred in failing to allow petitioner the benefit of the capital gains provisions set forth in Section 117, Internal Revenue Code for the taxable year 1942.

(e) The Commissioner has erroneousiy added a penalty to the deficiency for 1942 in the amount of $2,238.93. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioner contends that there was no intent to evade payment of income taxes for the year 1942.

(f) Without acquiescing as to the deficiency determination and reserving the right to challenge the same, the petitioner alleges that the Commissioner erred in failing to determine that the assessment or collection of income tax and victory tax for the year 1943 is barred by the Statute of Limitations.

(g) From the face of the notice of deficiency, it is apparent, and petitioner therefore alleges, that the Commissioner in determining petitioner's net taxable income erred in failing to allow petitioner the benefit of the capital gains provisions set forth in Section 117, Internal Revenue Code for the taxable year 1943.

(h) The Commissioner has erroneously added a penalty to the deficiency for 1943 in the amount of $2,360.94. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioner contends that there was no intent to evade the payment of income taxes for the year 1943.

(i) The Commissioner has erroneously determined the correct adjusted gross income of petitioner to be $7,530.32, for the year 1944; whereas, petitioner alleges, on information and belief, that his correct adjusted gross income was approximately $6,628.45.

(j) From the face of the notice of deficiency, it is apparent, and petitioner therefore alleges, that the Commissioner in determining petitioners net taxable income erred in failing to allow petitioner the benefit of the capital gains provisions set forth in Section 117, Internal Revenue Code, for the taxable year 1944.

(k) The Commissioner has erroneously added a penalty to the deficiency for 1944 in the amount of $372.40. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioner contends that there was no intent to evade the payment of income taxes for the year 1944.

(l) The Commissioner has erroneously determined the correct adjusted gross income of petitioner to be $46,344.26 for the year 1945; whereas petitioner alleges, on information and belief, that his correct adjusted gross income was approximately $21,333.63.

(m) From the face of the notice of deficiency, it is apparent, and petitioner therefore alleges, that the Commissioner in determining petitioner's net taxable income erred in failing to allow petitioner the benefit of the capital gains provisions set forth in Section 117, Internal Revenue Code, for the taxable year 1945.

(n) The Commissioner has erroneously added a penalty to the deficiency for 1945 in the amount of

$11,776.16. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioner contends that there was no intent to evade the payment of income taxes for the year 1945.

(o) The Commissioner has erroneously determined the correct adjusted gross income of petitioner to be $40,466.01 for the year 1946; whereas petitioner alleges, on information and belief, that his correct adjusted gross income was approximately $23,178.15.

(p) From the face of the notice of deficiency, it is apparent, and petitioner therefore alleges, that the Commissioner in determining petitioner's net taxable income erred in failing to allow petitioner the benefit of the capital gains provisions set forth in Section 117, Internal Revenue Code, for the taxable year 1946.

(q) The Commissioner has erroneously added a penalty to the deficiency for 1946 in the amount of $8,873.74. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioner contends that there was no intent to evade the payment of income taxes for the year 1946.

(r) The Commissioner has erroneously determined the correct adjusted gross income of petitioner to be $54,243.08 for the year 1947; whereas, petitioner alleges on information and belief, that his correct adjusted gross income was approximately $40,501.60.

(s) From the face of the notice of deficiency, it is apparent, and petitioner therefore alleges, that the Commissioner in determining petitioner's net taxable income erred in failing to allow petitioner the benefit

of the capital gains provisions set forth in Section 117, Internal Revenue Code, for the taxable year 1947.

(t) The Commissioner has erroneously added a penalty in the amount of $13,266.15 to the deficiency for the year 1947. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioner contends that there was no intent to evade the payment of income taxes for the year 1947.

(u) The Commissioner has erroneously added a penalty to the deficiency for 1947 in the amount of $6,633.08. No grounds or reasons are stated by the Commissioner for the assertion of this penalty. The petitioner contends that his failure to file an Income Tax Return for the year 1947, within the time prescribed by law, was due to reasonable cause and not due to wilful neglect.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner alleges on information and belief that the return for the calendar year 1941 was duly filed on or before March 15, 1942, with the Collector of Internal Revenue for the District of Georgia.

(b) The notice of deficiency was mailed as alleged under paragraph 2 above.

(c) Petitioner alleges on information and belief that the return for the calendar year 1942 was duly filed on or before March 15, 1943, with the Collector of Internal Revenue for the District of Georgia.

(d) The notice of deficiency was mailed as alleged under paragraph 2 above.

(e) During the taxable year 1942, and for several years prior thereto, petitioner maintained as an investment and as a part of his business certain properties devoted exclusively to rental purposes. The petitioner sold certain of these properties aforesaid during the year 1942. From the disposal of these properties, the petitioner realized gain and suffered no loss at all. All of the properties so disposed of during the year 1942 has been held by petitioner for a period of more than 6 months prior to the dates of disposal.

(f) Petitioner alleges on information and belief that the return for the calendar year 1943 was duly filed on or before March 15, 1944, with the Collector of Internal Revenue for the District of Georgia.

(g) The notice of deficiency was mailed as alleged under paragraph 2 above.

(h) During the taxable year 1943, and for several years prior thereto, petitioner maintained as an investment and as a part of his business certain properties devoted exclusvely to rental purposes. The petitioner sold certain of these properties aforesaid during the year 1943. From the disposal of these properties, the petitioner realized gain and suffered no loss at all. All of the properties so disposed of during the year 1943 had been held by petition for a period of more than 6 months prior to the dates of disposal.

(i) The petition for the taxable year 1944, received no taxable income from sources other than those in-

dicated on his tax return for the year here specifically involved; and received from such sources approximate income as follows: salary $3,265.00, net rental income $2101.92, interest and dividends $942.35, taxable gain from sale of capital assets $319.18, total income being approximately $6,628.45.

(j) During the taxable year 1944, and for several years prior thereto, petitioner maintained as an investment and as a part of his business, certain properties devoted exclusively to rental purposes. The petitioner sold certain of these properties aforesaid during the year 1944. From the disposal of these properties, the petitioner realized gain and suffered no loss at all. All of the properties so disposed of during the year 1944 had been held by petitioner for a period of more than 6 months prior to the dates of disposal.

(k) The petitioner for the taxable year 1945 received taxable income as follows: salary $3,630.00, net rental income $2,196.95, interest and dividends $2,921.30, taxable gain from the sale of capital assets $12,592.88, total income being approximately $21,333.63.

(l) During the taxable year 1945, and for several years prior thereto, petitioner maintained as an investment and as a part of his business, certain properties devoted exclusively to rental purposes. The petitioner sold certain of these properties aforesaid during the year 1945. From the disposal of these properties as aforesaid, the recognized gain exceeded the recognized losses. All of the properties so disposed of during the year 1945 had been held by petitioner more than 6 months prior to the dates of disposal.

(m) The petitioner for the taxable year 1946 received taxable income as follows: salary $1341.00, net rental income $2196.95, interest and dividends $4711.84, gain from sale of property resulting in income $10,-162.86, taxable gain from the sale of capital assets $4,765.50, total income being approximately $23,178.15.

(n) During the taxable year 1946, and for several years prior thereto, petitioner maintained as an investment and as a part of his business certain properties devoted exclusively to rental purposes. The petitioner sold certain of these properties aforesaid during the year 1946. From the disposal of these properties, the petitioner realized gain and suffered no loss at all. All of the properties so disposed of during the year 1946 had been held by petitioner for a period of more than 6 months prior to the dates of disposal.

(o) The petitioner for the taxable year 1947 received taxable income as follows: Net rental income $2,196.50, interest and dividends $7,444.60, gain from sale of property resulting in income $20,946.00, taxable gain from the sale of capital assets $9,914.50, total income being approximately $40,501.60.

(p) During the taxable year 1947, and for several years prior thereto, petitioner maintained as an investment and as a part of his business certain properties devoted exclusively to rental purposes. The petitioner sold certain of these properties aforesaid during the year 1947. From the disposal of these properties, the petitioner realized gain and suffered no loss at all. All of the properties so disposed of during the year 1947 had been held by petitioner for a period of more than 6 months prior to the dates of disposal.

(q) During the year 1947 petitioner came under investigation by agents of the Bureau of Internal Revenue for certain taxable years prior to 1947. Petitioner engaged the services of Mr. Hugh Beddingfield, Registered Public Accountant, State of Georgia, of the firm of Beddingfield, McCutcheon & Beddingfield, Augusta, Georgia, to assist him in this investigation. The investigation continued on into the year 1948, and petitioner sought the advice of this accountant concerning the preparation and filing of his Income Tax Return for the year 1947. Petitioner was informed by his accountant that it would be better to wait until the investigation was completed and then on the basis of facts gained as a result of that investigation, the accountant would file petitioner's Tax Return for the year 1947. Petitioner discussed this matter on several occasions with his accountant and received the same answer. This situation continued until 1951 when petitioner received his notice of deficiency and hence learned for the first time that the procedure which he had been following would be questioned. Petitioner alleges that the accountant whose advice he sought had a reputation for being competent, experienced and expert in Federal Tax matters, and, in fact, a former employee of the Bureau of Internal Revenue. Petitioner withheld no information from his accountant that would be required for the preparation of his 1947 Tax Return. Petitioner alleges that his failure to file his Tax Return for the year 1947 was done in good faith and in reliance on the advice given and was not due to any wilful neglect or intent to evade the payment of taxes on his part. Petitioner further alleges that he is now and has always been ready and willing to pay such income taxes as he may owe for the year 1947 and as evi-

dence of this good faith has in fact already paid to the Collector of Internal Revenue for the District of Georgia the sum of $10,000, even though no return has as yet been filed.

6. The full given name and surname of petitioner are as set forth in the caption to this proceeding and it is to be noted that petitioner is one and the same person with the individual to whom notice of deficiency hereinbefore referred to was sent, although said notice of deficiency was addressed to Mr. L. T. Anderson, 300 Sand Bar Ferry Road, Augusta, Georgia.

Wherefore, the petitioner prays that this Court may hear the proceeding sand determine that the deficiency due from the petitioner for the years 1941, 1942, 1943, 1944, 1945, 1946, 1947, should not be in excess of $32,137.28, and give such other and further relief as in the premises the Court may deem fit and proper.

(S.) LEWIS THURSTON ANDERSON,
Petitioner.

Lewis Thurston Anderson,
300 Sand Bar Ferry Road,
Augusta, Georgia.

(S.) EDWARD C. CUSHMAN, JR.,
Counsel for Petitioner.

Edward C. Cushman, Jr.,
Johnson Building,
800 Laurens (Main) St.,
Aiken, South Carolina.

State of South Carolina,
County of Aiken.

Lewis Thurston Anderson being duly sworn, says that he is the petitioner above named: that he has read the foregoing petition or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

(S.) LEWIS THURSTON ANDERSON.

Subscribed and sworn to before me this 21st day of June, A. D. 1951.

(S.) J. C. BUSBEE,
(Seal) Notary Public of South Carolina.

My Commission expires at the pleasure of the Governor.

EXHIBIT A.

(Copy.)

U. S. Treasury Department

Office of Internal Revenue Agent in Charge
Room 427, Federal Annex Building
Post Office Box 4025
Atlanta 2, Georgia

Internal Revenue Service
In Replying Refer To:
ITA:SN:JPH

March 28, 1951

Mr. L. T. Anderson
300 Sand Bar Ferry Road
Augusta, Georgia

Dear Mr. Anderson:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1941 discloses a deficiency of $838.80 and penalty of $419.40; that the determination of your income tax liability for the taxable year ended December 31, 1942 discloses a deficiency of $4,477.86 and penalty of $2,238.93; that the determination of your income and victory tax liability for the taxable year ended December 31, 1943 discloses a deficiency of $4,721.87 and penalty of $2,360.94; that the determination of your income tax liability for the taxable year ended December 31, 1944 discloses a deficiency of $744.79 and penalty of $372.40; that the determination of your income tax liability for the taxable year ended December 31, 1945 discloses a deficiency of $23,552.32 and penalty of $11,776.16; that the determination of your income tax liability for the taxable year ended December 31, 1946 discloses a deficiency of $17,747.47

and penalty of $8,873.74; and that the determination of your income tax liability for the taxable year ended December 31, 1947, discloses a deficiency of $26,532.30 and penalties of $19,899.23, as shown in the attached statement.

In accordance with the provisions of existing internal revenue laws notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent In Charge, Atlanta 2, Georgia, for the attention of ITA:SN:JPH. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,
GEO. J. SCHOENEMAN,
Commissioner,
By (S.) WILLIAM BRUSSE,
Internal Revenue Agent In Charge.

ors/d
Enclosures:
Statement
Form of Waiver

Statement

Mr. L. T. Anderson
300 Sand Bar Ferry Road
Augusta, Georgia

Tax Liability for the Taxable Years Ended December 31, 1941, 1942, 1943, 1944, 1945, 1946 and 1947

	Liability	Assessed	Deficiency	50% Penalty	25% Penalty
Income Tax:					
1941	$ 838.80	None	$ 838.80	$ 419.40	
1942	4,623.26	$ 145.40	4,477.86	2,238.93	
Income and Victory Tax:					
1943			4,721.87	2,360.94	
Income Tax:					
1944			744.79	372.40	
1945			23,552.32	11,776.16	
1946			17,747.47	8,873.74	
1947			26,532.30	13,266.15	$6,633.08
Total			$78,615.41	$39,307.72	$6,633.08

The determination of your income and victory tax and penalty liability has been made upon the basis of information on file in this office.

Inasmuch as you failed to file a return for the taxable year ended December 31, 1947, within the time prescribed by law, 25 per centum of the tax for that year has been added thereto in accordance with the provisions of Section 291 (a) of the Internal Revenue Code.

The 50 per cent penalty shown herein has been asserted in accordance with the provision of Section 293(b) of the Internal Revenue Code.

Taxable Year Ended December 31, 1941

Adjustments to Net Income

Net Income as disclosed by return	$ 1,426.03
Unallowable deductions and additional income:	
(a) Understatement of income	6,715.85
Net income adjusted	$ 8,141.88

Explanation of Adjustments

(a) It is held that the net income reported on your return filed for the taxable year ended December 31, 1941, was understated by $6,715.85, as determined from increase in your net worth and other data available, as follows:

Net worth at December 31, 1941	$59,619.44
Net worth at December 31, 1940	53,280.56
Increase in net worth	$ 6,338.88
Add: Personal & Living expenses	2,000.00
Total	$ 8,338.88
Less: Allowable contributions (per return)	197.00
Correct taxable net income	$ 8,141.88
Taxable net income per return	1,426.03
Understatement of income	$ 6,715.85

Taxable Year Ended December 31, 1941

Computation of Tax

Net income adjusted		$ 8,141.88
Less:		
Personal exemption	$ 1,500.00	
Credit for dependents	400.00	1,900.00
Balance (surtax net income)		$ 6,241.88
Less:		
Earned income credit		300.00
Net nicome subject to normal tax		$ 5,941.88
Normal tax @ 4% on $5,941.88		$ 237.68
Surtax on $6,241.88		601.12
Total tax		$ 838.80
Correct income tax liability		$ 838.80
Income tax assessed:		
Original, account No. 657117		None
Deficiency of income tax		$ 838.80
Penalty—50% of $838.80		$ 419.40

Taxable Year Ended December 31, 1942

Adjustments to Net Income

Net income as disclosed by return	$ 2,390.80
Unallowable deductions and additional income:	
(a) Understatement of income	14,074.97
Net income adjusted	$16,465.77

Taxable Year Ended December 31, 1942

Explanation of Adjustments

(a) It is held that the net income reported on your return filed for the taxable year ended December 31, 1942, was understated by $14,074.97, as determined from increase in your net worth and other data available, as follows:

Net worth at December 31, 1942		$74,362.58
Net worth at December 31, 1941		59,619.44
Increase in net worth		$14,743.14
Add: Personal and living expenses		2,000.00
Total		$16,743.14
Less: Allowable contributions (per return)	$ 200.00	
50% of long-term capital gain from sale of securities (not taxable)	77.37	277.37
Correct taxable net income		$16,465.77
Taxable net income per return		2,390.80
Understatement of income		$14,074.97

Taxable Year Ended December 31, 1942
Computation of Tax

Net income adjusted		$16,465.77
Less:		
Personal exemption	$ 1,200.00	
Credit for dependents	350.00	1,550.00
Balance (surtax net income)		$14,915.77

Less:	
Earned income credit	300.00
Net income subject to normal tax	$14,615.77
Normal tax @ 6% on $14,615.77 ...	$ 876.95
Surtax on $14,915.77	3,746.31
Total tax	$ 4,623.26
Correct income tax liability	$ 4,623.26
Income tax assessed:	
Original, Account No. 43490 ..	145.40
Deficiency of income tax	$ 4,477.86
Penalty—50% of $4,477.86	$ 2,238.93

Taxable Year Ended December 31, 1943

Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return	$ 2,060.91	$ 2,761.16
Unallowable deductions and additional income:		
(a) Understatement of income..	13,941.20	13,430.95
Net income adjusted	$16,002.11	$16,192.11

Explanation of Adjustments

(a) It is held that the incor e tax net income reported on your return filed for the taxable year ended December

31, 1943 was understated by $13,941.20 and the victory tax net income reported thereon was understated by $13,430.95, as determined from increase in your net worth and other data available, as follows:

Net worth at December 31, 1943	$88,554.69
Net worth at December 31, 1942	74,362.58
Increase in net worth	$14,192.11
Add: Personal and living expenses	2,000.00
Total	$16,192.11
Less: Contributions allowable (per return)	190.00
Correct taxable income tax net income	$16,002.11
Total income tax net income per return	2,060.91
Understatement of income tax net income	$13,941.20
Correct taxable income tax net income as computed above	$16,002.11
Add: Contributions, not deductible in computing victory tax net income	190.00
Correct taxable victory tax net income	$16,192.11
Taxable victory tax net income per return	2,761.16
Understatement of victory tax net income	$13,430.95

Taxable Year Ended December 31, 1943

Computation of Income and Victory Tax—Current Tax Payment Act of 1943

Income tax net income adjusted	$16,002.11

Less:		
Personal exemption	$ 1,200.00	
Credit for dependents	350.00	1,550.00
Surtax net income		$14,452.11
Less: Earned income credit		300.00
Balance subject to normal tax		$14,152.11
Normal tax at 6 per cnt on $14,152.11	$ 849.13	
Surtax on $14,452.11	3,560.84	
Total income tax		$ 4,409.97
Balance of income tax		$ 4,409.97
Victory tax net income	$16,192.11	
Less: Specific exemption	624.00	
Income subject to victory tax	$15,568.11	
Victory tax before credit (5% of $15,568.11)	$ 778.41	
Less: Victory tax credit (42% of $778.41)	326.93	451.48
Net income tax and victory tax		$ 4,861.45
Total income and victory tax liability		$ 4,861.45
Income and victory tax liability disclosed by return (line 16, page 4)		139.58
Deficiency in income and victory tax		$ 4,721.87
Penalty—50% of $4,721.87		2,360.94

Taxable Year Ended December 31, 1944

Adjustments to Income

Adjusted gross income as disclosed by return	$ 4,754.05
Unallowable deductions and additional income:	
(a) Understatement of income	2,776.27
Adjusted gross income as corrected	$ 7,530.32
Nontaxable income and additional deductions:	
(b) Standard deduction	500.00
Net income adjusted	$ 7,030.32

Explanation of Adjustments

(a) It is held that the adjusted gross income reported on your return filed for the taxable year ended December 31, 1944 was understated by $2,776.27, as determined from increase in your net worth and other data available, as follows:

Net worth at December 31, 1944	$94,085.01
Net worth at December 31, 1943	88,554.69
Increase in net worth	$ 5,530.32
Add: Personal and living expenses	2,000.00
Correct adjusted gross income	$ 7,530.32
Adjusted gross income per return	4,754.05
Understatement of income	$ 2,776.27

(b) Since you elected to compute your tax for the taxable year ended December 31, 1944 from the tax table at Supplement "T", and since your adjusted gross income as corrected is in excess of $5,000.00, you have been allowed the standard deduction of $500.00 as provided by Section 23(aa) of the Internal Revenue Code.

Taxable Year Ended December 31, 1944

Computation of Tax

Net income adjusted	$ 7,030.32
Less: Surtax exemptions	1,500.00
Balance (surtax net income)	$ 5,530.32
Net income adjusted	$ 7,030.32
Less: Normal tax exemption	500.00
Normal tax net income	$ 6,530.32
Normal tax @ 3% on $6,530.32	$ 195.91
Surtax on $5,530.32	1,237.88
Total tax	$ 1,433.79
Correct income tax liability	$ 1,433.79
Income tax liability disclosed by return	689.00
Deficiency of income tax	$ 744.79
Penalty—50% of $744.79	$ 372.40

Taxable Year Ended December 31, 1945

Adjustments to Income

Adjusted gross income as disclosed by return	$ 4,171.70
Unallowable deductions and additional income:	
(a) Understatement of income	42,172.56
Adjusted gross income as corrected	$46,344.26
Nontaxable income and additional deductions:	
(b) Standard deduction	500.00
Net income adjusted	$45,844.26

Explanation of Adjustments

(a) It is held that the adjusted gross income reported on your return filed for the taxable year ended December 31, 1945, was understated by $42,172.56, as determined from increase in your net worth and other data available, as follows:

Net worth at December 31, 1945	$137,936.77
Net worth at December 31, 1944	94,085.01
Increase in net worth	$ 43,851.76
Add: Personal and living expenses	2,500.00
Total	$ 46,351.76
Less: 50% of long-term capital gain from sale of securities—not taxable	7.50
Correct adjusted gross income	$ 46,344.26
Adjusted gross income per return	4,171.70
Understatement of income	$ 42,172.56

(b) Since you elected to compute your tax for the taxable year ended December 31, 1945, from the tax table at Supplement "T", and since your adjusted gross income as corrected is in excess of $5,000.00, you have been allowed the standard deduction of $500.00 as provided by Section 23 (aa) of the Internal Revenue Code.

Computation of Tax

Net income adjusted	$45,844.26
Less: Surtax exemptions	1,500.00
Balance (surtax net income)	$44,344.26
Net income adjusted	$45,844.26
Less: Normal tax exemption	500.00
Normal tax net income	$45,344.26
Normal tax @ 3% on $45,344.26	$ 1,360.33
Surtax on $44,344.26	22,747.87
Total tax	$24,108.20
Total alternative tax	$24,106.32
Correct income tax liability	$24,106.32
Income tax liability disclosed by return	554.00
Deficiency of income tax	$23,552.32
Penalty—50% of $23,552.32	$11,776.16

Taxable Year Ended December 31, 1945

Computation of Alternative Tax

Net income adjusted	$45,844.26
Less: Excess of net long-term capital gain over net short-term capital loss	7.50

Ordinary net income		$45,836.76
Less: Surtax exemptions		1,500.00
Balance (surtax net income)		$44,336.76
Ordinary net income (as above)		$45,836.76
Less: Normal-tax exemption		500.00
Balance subject to normal tax		$45,336.76
Taxes on above:		
Normal tax at 3 per cent on $45,336.76	$ 1,360.10	
Surtax on $44,336.76	22,742.47	
Partial tax		$24,102.57
Plus: 50% of net long-term capital gain of $7.50		3.75
Alternative tax		$24,106.32

Taxable Year Ended December 31, 1946

Adjustments to Income

Adjusted gross income as disclosed by return	$ 1,596.01
Unallowable deductions and additional income:	
(a) Understatement of income	38,870.00
Adjusted gross income as corrected	$40,466.01
Nontaxable income and additional deductions:	
(b) Standard deduction	500.00
Net income adjusted	$39,966.01

Explanation of Adjustments

(a) It is held that the adjusted gross income reported on your return filed for the taxable year ended December 31, 1946, was understated by $38,870.00, as determined from increase in your net worth and other data available, as follows:

Net worth at December 31, 1946	$175,902.78
Net worth at December 31, 1945	137,936.77
Increase in net worth	$ 37,966.01
Add: Personal and living expenses	2,500.00
Corrected adjusted gross income	$ 40,466.01
Adjusted gross income per return	1,596.01
Understatement of income	$ 38,870.00

(b) Since you did not claim any itemized deductions on your return filed for the taxable year ended December 31, 1946, and since your adjusted gross income as corrected is in excess of $5,000.00, you have been allowed the standard deduction of $500.00 as provided by Section 23 (aa) of the Internal Revenue Code.

Computation of Tax

Net income adjusted	$39,966.01
Less: Exemptions	1,500.00
Balance (normal tax and surtax net income)	$38,466.01
Tentative normal tax and surtax on $38,466.01	$18,681.55
Less: 5% of $18,681.55	934.08

Combined normal tax and surtax	$17,747.47
Correct income tax liability	$17,747.47
Income tax liability disclosed by return	None
Deficiency of income tax	$17,747.47
Penalty—50% of $17,747.47	$ 8,873.74

Taxable Year Ended December 31, 1947

Since no return has been filed for this year net income has been determined as follows:

Income:		
(a) Increase in net worth during taxable year		$51,243.08
(b) Estimated amount of living and family expenses		3,000.00
Total Income		$54,243.08
Deductions:		
(c) Capital gain adjustment	$ 589.08	
(d) Standard deduction	500.00	1,089.08
Taxable net income		$53,154.00

Explanation of Income and Deductions

In the absence of adequate records your income has been determined on the following basis:

(a) Net worth at December 31, 1947	$227,145.86
Net worth at December 31, 1946	175,902.78
Increase in net worth	$ 51,243.08

(b) Estimated amount of disbursements for living and family expense, $3,000 00.

(c) Increase in net worth at item (a), above, includes long-term capital gain from sales of securities in the total amount of $1,178.16. Since only 50 per cent of long-term capital gains is subject to tax under the provisions of Section 117 (b) of the Internal Revenue Code, the non-taxable portion, or $589.08, is eliminated from income.

(d) Since your adjusted gross income is in excess of $5,000.00, you have been allowed the standard deduction of $500.00, as provided by Section 23(aa) of the Internal Revenue Code.

Taxable Year Ended December 31, 1947

Computation of Tax

Net income as determined	$53,154.00
Less: Exemptions	1,500.00
Balance (normal tax and surtax net income)	$51,654.00
Tentative normal tax and surtax on $51,654.00	$28,060.50
Less: 5% of $28,060.50	1,403.03
Combined normal tax and surtax	$26,657.47
Alternative tax	$26,532.30
Correct income tax liability	$26,532.30
Income tax liability disclosed by return. No return filed	None
Deficiency of income tax	$26,532.30
Penalty—Section 291(a) of the Internal Revenue Code—25% of $26,532.30	$ 6,633.08
Penalty—Section 293(b) of the Internal Revenue Code—50% of $26,532.30	$13,266.15

Taxable Year Ended December 31, 1947

Computation of Alternative Tax

Net income determined	$53,154.00
Less: Excess of net long-term capital gain over net short-term capital loss	589.08
Ordinary net income	$52,564.92
Less: Exemptions	1,500.00
Balance	$51,064.92
Combined tentative normal tax and surtax on $51,064.92	$27,618.69
Less: 5 per cent of $27,618.69	1,380.93
Partial tax	$26,237.76
Plus: 50 per cent of net long-term capital gain of $589.08	294.54
Alternative tax	$26,532.30

(Copy.)

U. S. Treasury Department
Internal Revenue Service
(Revised Nov. 1949)
ITA:SN:JPH—Atlanta Division
L. T. Anderson

Date Received

Waiver of Restrictions on Assessment and Collection of Deficiency in Tax.

Pursuant to the provisions of section 272 (d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax:

		50% Penalty
taxable year ended December 31, 1941 income tax in the sum of	$ 838.80	$ 419.40
taxable year ended December 31, 1942 income tax in the sum of	4,477.86	2,238.93
taxable year ended December 31, 1943 income tax in the sum of	$ 4,721.87	2,360.94

taxable year ended December 31, 1944 income tax in the sum of	744.79	372.40
taxable year ended December 31, 1945 income tax in the sum of	$ 23,552.32	11,776.16
taxable year ended		
taxable year ended December 31, 1946 income tax in the sum of	$ 17,747.47	8,873.74
taxable year ended December 31, 1947 income tax in the sum of	26,532.30	13,266.15
taxable year ended December 31, 1947, 25% penalty in the sum of	6,633.08	
taxable year ended	$	
amounting to the total sum of (Deficiencies and Penalties	$124,556.21	

together with interest thereon as provided by law.

....., (Taxpayer),

....., (Taxpayer),

(Seal)

(Address),

By .....

(Date) .....

Note—The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a Joint Return of a Husband and Wife was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

*U. S. Government Printing Office,
16-8466-2.

ANSWER.

Filed Aug. 23, 1951.

Received Aug. 23, 1951.

The Tax Court of the United States.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Comes now the respondent, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, alleges, avers and denies as follows:

1. and 2. Admits the allegations set forth in paragraphs 1 and 2 of the petition.

3. Denies that the amount of the deficiency determined by the respondent for the taxable year 1943 is $4,757.51 and for the taxable year 1945 is $23,415.04. Denies that the total amount of the deficiencies determined for the taxable years 1941 through 1947, inclusive, is $78,513.77. Denies that the combined total amount of the defieicney and penalty for the taxable year 1943 is $7,118.45 and for the taxable year 1945 is $35,191.20. Denies that the over-all total amount of deficiencies and penalties determined for the taxable years 1941 through 1947, inclusive, is $124,454.57, Denies that the approximate total amount in dispute is $92,317.29 and that the approximate amounts in dispute for each of the taxable years 1941 through 1947, inclusive, are the amounts set forth in paragraph 3 of the petition. Admits the remaining allegations set forth in paragraph 3 of the petition.

4. (a) to (u) Denies the allegations of error set forth in paragraph 4, subparagraphs (a) to (u), inclusive, of the petition.

5. (a) to (d) Admits the allegations set forth in paragraph 5, subparagraphs (a) to (d), inclusive, of the petition.

5. (e) Denies the allegations set forth in paragraph 5, subparagraph (e), of the petition.

5. (f) and (g) Admits the allegations set forth in paragraph 5, subparagraphs (f) and (g), of the petition.

5. (h) to (q) Denies the allegations set forth in paragraph 5, subparagraphs (h) to (q), inclusive, of the petition.

6. Admits the allegations set forth in paragraph 6 of the petition.

7. Denies generally and specifically each and every allegation set forth in the petition not hereinbefore admitted, qualified, or denied.

Further answering the petition the respondent affirmatively alleges, avers and asserts as follows:

8. That this petition is liable for the 50% penalty prescribed by Section 293(b) of the Internal Revenue Code in the amounts set forth in the notice of deficiency for the calendar years 1941 to 1947, inclusive.

9. In support thereof the respondent relies upon the following facts:

(a) The amount of net income reported by this petitioner in his original Federal tax return, the corrected amount of his net income and the amount of net income omitted from the original return for each of the calendar years 1941, 1942 and 1943 were as follows:

Year		Amount Reported	Amount Omitted	Correct Amount
1941		$1,426.03	$ 6,715.85	$ 8,141.88
1942		2,390.80	14,074.97	16,465.77
1943	Income tax	2,060.91	13,941.20	16,002.11
	Victory tax	2,761.16	13,430.95	16,192.11

(b) The amount of adjusted gross income reported by this petition in his original Federal tax return, the correct amount of his adjusted gross income and the amount of adjusted gross income omitted from the original returns for the calendar years 1944, 1945 and 1946 were as follows:

Year	Amount Reported	Amount Omitted	Correct Amount
1944	$4,754.05	$ 2,776.27	$ 7,530.32
1945	4,171.70	42,176.56	46,344.26
1946	1,596.01	38,870.00	40,466.01

(c) The petitioner, with wilful intent to evade Federal income taxes, filed a false and fraudulent Federal income tax return for the calendar year 1941 omitting net income of $6,715.85.

(d) The petitioner, with wilful intent to evade Federal income taxes, filed a false and fraudulent Federal income tax return for the calendar year 1942 omitting net income of $14,074.97.

(e) The petitioner, with wilful intent to evade Federal income and victory taxes, filed a false and fraudulent income and victory tax return for the calendar year 1943 omitting net income for income tax purposes in the amount of $13,941.20 and omitting net income for victory tax purposes in the amount of $13,430.95.

(f) The petitioner, with wilful intent to evade Fedreral income taxes, filed a false and fraudulent Federal income tax return for the calendar year 1944 omitting adjusted gross income of $2,776.27.

(g) The petitioner, with wilful intent to evade Federal income taxes, filed a false and fraudulent Fedral income tax return for the calendar year 1945 omitting adjusted gross income of $42,176.56.

(h) The petitioner, with wilful intent to evade Federal income taxes, filed a false and fraudulent Federal income tax return for the calendar year 1946 omitting adjusted gross income of $38,870.00.

(i) The petitioner did not file a Federal income tax return for the calendar year 1947.

(j) The petitioner, with intent to evade tax, wilfully failed to file a Federal income tax return for the calendar year 1947, notwithstanding the fact he

had taxable income for said year in the amount of $83,184.00.

10. That by reason of his failure to report his correct income for the calendar years 1941 through 1946, inclusive, and his failure to file a Federal income tax return for the calendar year 1947, there are due from this petitioner deficiencies in taxes and penalties as set forth in the notice of deficiency, a copy of which is attached to the petition and incorporated herein by reference, and that a part of each deficiency for the calendar years 1941 through 1947, inclusive, was due to fraud with intent to evade tax.

11. The deficiencies and penalties asserted by the respondent in his notice of deficiency dated March 28, 1951, for the calendar years 1941, 1942, and 1943 are not barred by the statute of limitations.

12. In support of this allegation the respondent relies upon the filing of false and fraudulent returns by the petitioner with intent to evade taxes for each of the calendar years 1941, 1942, and 1943. The facts with respect to the filing of these false and fraudulent returns are set forth in this answer in paragraphs 8 through 10, inclusive.

Wherefore, it is prayed that the appeal be denied and that the deficiencies and penalties set forth in the notice of deficiency be in all respects approved.

(Signed) CHARLES OLIPHANT, F.V.H.,
(Charles Oliphant),
Chief Counsel, Bureau of Internal Revenue.

Of Counsel:
FRANK M. THOMPSON, JR.,
Division Counsel,
WILLIAM W. OLIVER,
Special Attorney,
Bureau of Internal Revenue.

WWO:ftm 8/15/51.

REPLY.

Filed Oct. 9, 1951.

The Tax Court of the United States.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Leave to file Granted. Judge (signed) John W. Kern.

The above named petitioner, for reply to the allegations affirmatively set out by the respondent in his answer, admits and denies as follows:

8. Denies in its entirety paragraph eight (8) of respondent's answer herein.

9. (a) Admits the amount of net income reported by petitioner in his original Federal tax return for each of the calendar years 1941, 1942 and 1943, to be as set forth in paragraph 9, subparagraph (a) of respondent's answer; denies specifically and generally each and every other allegation in paragraph 9, subparagraph (a) of said answer contained.

9. (b) Admits the amount of adjusted gross income reported by petitioner in his original Federal tax return for each of the calendar years 1944, 1945 and 1946 to be as set forth in paragraph 9, subparagraph (b) of respondent's answer; denies specifically and generally each and every other allegation in paragraph 9, subparagraph (b) of said answer contained.

9. (c) Denies in its entirety paragraph 9, subparagraph (c); denies specifically and generally each and every allegation of paragraph 9, subparagraph (c), of said answer contained; denies any intent to defeat and evade any tax by means of the failure to report net income in the amount of $6,715.85 for the calendar year 1941; denies the omission of net income in the amount of $6,715.85 for the calendar year 1941; denies the filing of a false and fraudulent tax return for the calendar year 1941; alleges that the omission of any taxable income for the calendar year 1941 was due to honest mistake or inadvertence.

9. (d) Denies in its entirety paragraph 9, subparagraph (d); denies specifically and generally each and every allegation of paragraph 9, subparagraph (d) of

said answer contained; denies any intent to defeat and evade any tax by means of the failure to report net income in the amount of $14,074.97 for the calendar year 1942; denies the omission of net income in the amount of $14,074.97 for the calendar year 1942; denies the filing of a false and fraudulent tax return for the calendar year 1942; alleges that the omission of any taxable income for the calendar year 1942 was due to honest mistake or inadvertence.

9. (e) Denies in its entirety paragraph 9, subparagraph (e); denies specifically and generally each and every allegation of paragraph 9, subparagraph (e) of said answer contained; denies any intent to defeat and evade any tax by means of failure to report net income for income tax purposes in the amount of $13,941.20 and by means of failure to report net income for victory tax purposes in the amount of $13,430.95; denies the omission of net income for income tax purposes in the amount of $13,941.20; denies the omission of net income for victory tax purposes in the amount of $13,430.95, all for the calendar year 1943; denies the filing of a false and fraudulent income and victory tax return for the calendar year 1943; alleges that the omission of any taxable income for the calendar year 1943 was due to honest mistake or inadvertence.

9. (f) Denies in its entirety paragraph 9, subparagraph (f); denies specifically and generally each and every allegation of paragraph 9, subparagraph (f) of said answer contained; denies any intent to defeat and evade any tax by means of the failure to report net income in the amount of $2,776.27 for the calendar year 1944; denies the omission of net income in the

amount of $2,776.27 for the calendar year 1944; denies the filing of a false and fraudulent tax return for the calendar year 1944; alleges that the omission of any taxable income for the calendar year 1944 was due to honest mistake or inadvertence.

9. (g) Denies in its entirety paragraph 9, subparagraph (g); denies specifically and generally each and every allegation of paragraph 9, subparagraph (g) of said answer contained; denies any intent to defeat and evade any tax by means of the failure to report net income in the amount of $42,176.56 for the calendar year 1945; denies the omission of net income in the amount of $42,176.56 for the calendar year 1945; denies the filing of a false and fraudulent tax return for the calendar year 1945; alleges that the omission of any taxable income for the calendar year 1945 was due to honest mistake or inadvertence.

9. (h) Denies in its entirety paragraph 9, subparagraph (h); denies specifically and generally each and every allegation of paragraph 9, subparagraph (h) of said answer contained; denies any intent to defeat and evade any tax by means of the failure to report net income in the amount of $38,870.00 for the calendar year 1946; denies the omission of net income in the amount of $38,870.00 for the calendar year 1946; denies the filing of a false and fraudulent tax return for the calendar year 1946; alleges that the omission of any taxable income for the calendar year 1946 was due to honest mistake or inadvertence.

9. (i) Admits the allegations of paragraph 9, subparagraph (i), of said answer contained, subject to

explanation already advanced in paragraph 5 (q) of the petition already filed in this proceeding.

9. (j) Denies in its entirety paragraph 9, subparagraph (j); denies specifically and generally each and every allegation of paragraph 9, subparagraph (j) of said answer contained; denies wilful failure to file a Federal income tax return for the calendar year 1947; denies any intent to defeat or evade the payment of any tax by the means specified in respondent's answer; denies taxable income for the year 1947 in the amount of $53,154.00; alleges that failure to file a tax return for the year 1947 was due to mistake, inadvertence and bad advice.

10. Denies in its entirety paragraph ten (10) of said answer contained; denies specifically and generally each and every allegation in paragraph 10 of said answer contained; denies that any deficiency which petitioner may be liable for was due to fraud with intent to evade tax; alleges that any deficiency for which petitioner may be liable was due to honest mistake, error, inadvertence and bad advice; specifically denies that there are due from petitioner deficiencies in taxes and penalties as set forth in the notice of deficiency.

11. Denies in its entirety paragraph eleven (11) of said answer contained.

12. Denies in its entirety paragraph twelve (12) of said answer contained; denies specifically and generally each and every allegation in paragraph 12 of said answer contained; denies again all allegations of fact with respect to the filing of allegedly false and

fraudulent returns, as said facts are set forth in respondent's answer, paragraphs 8 through 10, inclusive.

Wherefore, it is prayed that the affirmative relief requested by the respondent in his answer be denied.

(S.) EDWARD C. CUSHMAN, JR.,
Counsel for Petitioner.

Edward C. Cushman, Jr.,
Johnson Building,
800 Laurens (Main) St.,
Aiken, South Carolina.

AMENDED PETITION.

Filed at Hearing Sep. 20, 1954.

The Tax Court of the United States.

Lewis Thurston Anderson, Petitioner,
vs. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency, dated March 28th, 1951, and as a basis of his proceedings alleges as follows:

I. The Petitioner is an individual with residence at 400 Colorado Road, Augusta, Georgia. The returns for all years here involved were filed with the Collector of Internal Revenue for the District of Georgia; ex-

cept, that for the taxable year 1947, no return has been filed.

II. The Notice of Deficiency (a copy of which was attached to the original Petition and marked Exhibit A) was mailed to the Petitioner on March 28th, 1951.

III. The Respondent has determined deficiencies in income taxes and 1943 Victory Tax, with penalties for the respective years as follows:

Year	Deficiency	50% Penalty	25% Penalty	Total
1941	$ 838.80	$ 419.40	—	$ 1,258.20
1942	$ 4,477.86	$ 2,238.93	—	$ 6,716.79
1943	$ 4,757.51	$ 2,360.94	—	$ 7,118.45
1944	$ 744.79	$ 372.40	—	$ 1,117.19
1945	$23,415.04	$11,776.16	—	$ 35,191.20
1946	$17,747.47	$ 8,873.74	—	$ 26,621.31
1947	$26,532.30	$13,266.15	$ 6,633.08	$ 46,431.53
	$78,513.77	$39,307.72	$ 6,633.08	$124,454.57

IV. The Respondent erred in asserting the deficiencies for the years 1941, 1942, 1943, as set forth in the Notice of Deficiency, the said deficiencies having been barred by Section 275(a) of the Internal Revenue Code.

V. The Respondent erred in asserting the 50% Penalties for the taxable years as set forth in the Notice of Deficiency viz 1941 through 1947.

VI. The tax deficiencies and penalties asserted in the Notice of Deficiency total $124,454.57, substantially all of which is in controversy.

VII. The Respondent erred in failing to allow the Petitioner the benefits of Section 117 (Capital Gains) for each of the years involved on the real estate sold.

VIII. The Respondent erred in including in the net worth for each year, Notes received on the sale of Real Estate by the Petitioner at their face value (100%).

IX. The Respondent erred in failing to allow the Petitioner the full costs for the properties sold in all years.

X. The Respondent erred in failing to show in the net worth computation all of the liabilities owed by the Petitioner in the respective years.

XI. The Respondent erred in failing to include in the net worth statement each year, any amount of cash on hand.

XII. The Respondent erred in the computation of the Reserve for Depreciation for all years from 1940 through 1947.

XIII. The Respondent erred in including in the net worth computation assets that were not those of the Petitioner.

XIV. The Respondent erred in the computation of net worth by including as assets both the real estate sold and the Notes received from the specific sales.

XV. The Respondent erred in all years in failing to allow the Petitioner a deduction for Georgia and South Carolina income tax liability.

XVI. The Respondent has erroneously determined the net income adjusted for 1941 to be $8,141.88, and the tax deficiency and penalties to be $1,258.20.

XVIa. The Respondent has erroneously determined the net income adjusted for 1942 to be $16,465.77, and the tax deficiency and penalties to be $6,716.79.

XVIb. The Respondent has erroneously determined the net income adjusted for 1943 to be $16,002.11, and the tax deficiency and penalties to be $7,118.45.

XVIc. The Respondent has erroneously determined the net income adjusted for 1944 to be $7,530.32, and the tax deficiency and penalties to be $1,117.19.

XVId. The Respondent has erroneously determined the net income adjusted for 1945 to be $45,844.26 and the tax deficiency and penalties to be $35,191.20.

XVIe. The Respondent has erroneously determined the net income adjusted for 1946 to be $39,966.01 and the tax defieiency and penalties to be $26,621.21.

XVIf. The Respondent has erroneously determined the net income adjusted for 1947 to be $53,154.00 and tax deficiency and penalties to be $46,431.53.

XVIg. The Respondent has erroneously assessed a delinquency penalty against the Petitioner for 1947.

XVII. The facts upon which the Petitioner relies as the basis for this proceeding are as follows:

(a) The Petitioner filed income tax returns for the calendar years 1941, 1942 and 1943 on the due date, or on a date extended by the Collector of Internal Revenue for the District of Georgia. The returns had all been filed more than three years prior to the mailing of the Notice of Deficiency in March, 1951.

(b) Commencing in 1926 and through all of the years involved in this proceeding, the Petitioner maintained as an investment, real estate devoted exclusively for rental purposes. Many of these properties were purchased and then rehabilitated, others were built by the Petitioner.

(c) In 1942, a tract of land was acquired on Sand Bar Ferry Road, and the Petitioner alleges he built thereon, (without any formal subdividing) twelve houses, all of which Petitioner rented until 1945 or 1946.

(d) The Petitioner listed these houses on the depreciation schedule accompanying each return filed since 1940, showing his alleged cost and the accrued depreciation. As each house was sold, it was dropped off the said schedules.

(e) The rental properties were located principally in three locations—Druid Hills, which is about six miles from the City Limits of Augusta, Georgia; Sand Bar Ferry Road, located about one and one-half miles from Augusta, Georgia; and Harrisburg, which is within the City Limits. The Druid Hills properties had outside toilets, pump water, no sewerage and no fire protection. The Sand Bar Ferry Road properties had no City water, septic tanks, and no sewerage or fire

protection. The Harrisburg property is in the poorest section of Augusta, Georgia.

(f) At the end of 1941, the Petitioner listed as rental property, 31 houses, and gross rent of $7,457.37.

(g) At the end of 1942, the Petitioner listed as rental property, 43 houses and gross rent of $8,478.93.

(h) At the end of 1943, the Petitioner listed as rental property, 47 houses and gross rent of $9,194.37.

(i) At the end of 1944, the Petitioner listed as rental property, 49 houses and gross rent of $11,794.98.

(j) At the end of 1945, the Petitioner listed as rental property, 49 houses and gross rent of $8,897.41.

(k) At the end of 1946, the Petitioner listed as rental property, 24 houses and gross rent of $7,389.32.

XVIII. During the years involved, sales were made of this rental property with a small down payment, and the balance payable monthly over a period as long as 119 months. The Petitioner alleges that the Notes received as payments for the property sold were worth only 35 or 40 per cent of the face value, and he would realize no gain until he recovered the cost or basis he had in the properties.

XIX. The Petitioner alleges that he is entitled to the benefits allowed him under Section 117 (Capital Gain) upon the sale of all rental properties held over six months.

XX. The Petitioner has consistently used rates of depreciation since 1926, and alleges that there was no basis for changing that rate.

XXI. The Petitioner alleges that at the end of each year, he owed for construction and materials and for borrowed funds to which he is entitled to have an adjustment made on the net worth statement.

XXII. The Petitioner alleges that upon the death of his father in 1929, he inherited money and property from his father's estate and is entitled to have it considered in the net worth computation.

XXIIa. The Petitioner alleges that his mother and his sister also inherited from the father's estate and that certain securities in the net worth statement belong to said mother and sister and they should be eliminated from income and net worth.

XXIII. The Petitioner alleges that the net worth statement is erroneous in that it includes in 1946 and other years, Notes for real estate sold and also the specific real estate, and this should be adjusted.

XXIV. The Petitioner alleges that State Income Taxes caused by reason of any deficiency in this proceeding will be assessed against him, and he should be allowed these taxes as a deduction.

XXV. The Petitioner alleges that each year, except 1947, he brought his income tax data to the local office of the Collector of Internal Revenue and they prepared his return.

XXVI. The Petitioner alleges that he engaged a former Deputy Collector to prepare his 1947 return; and that the Petitioner had turned over his records for all years prior to 1947 to said former government employee who was practising as an accountant in Augusta, Georgia. The books had been requested by a Deputy Collector, and the Petitioner had his accountant deliver the same in 1947. This same accountant prepared Petitioner's 1948 return.

XXVII. The Petitioner denies that he wilfully failed to file a return for 1947, and deposited $10,000.00 with the Government to show good faith although no return was filed.

XXVIII. The Petitioner denies that he wilfully filed a false and fraudulent return for any year in this proceeding.

XXIX. The Petitioner is one and the same person to whom the deficiency Notice was sent although his address is presently 400 Colorado Street, Augusta, Georgia.

XXX. Wherefore, Petitioner prays that this Honorable Court hear this proceeding and determine:

(a) That the Statute of Limitation has tolled against the years 1941—1942 and 1943, and

(b) That the Petitioner has not filed a false and fraudulent return for any year, and

(c) Grant the Petitioner the benefits of capital gain on the disposal of qualified rental property, and

(d) That the net worth computation of the Respondent is in error, and

(e) That the Notes received by the Petitioner had very little value, and

(f) Grant such other and further relief as to this Honorable Court may seem just and proper.

Respectfully submitted,

(S.) EDWARD C. CUSHMAN, JR.,
(Edward C. Cushman, Jr.),
Counsel for Petitioner.

Aiken, South Carolina.

State of South Carolina,
County of Aiken.

Lewis Thurston Anderson being duly sworn, says that he is the Petitioner above named; that he has read the foregoing Amended Petition or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

(S.) LEWIS THURSTON ANDERSON.

Subscribed and sworn to before me this 15th day of September, A. D. 1954.

(S.) H. R. ASHHURST, (L. S)
(Seal) Notary Public of South Carolina.

My Commission expires at the pleasure of the Governor.

ANSWER TO AMENDED PETITION.

Filed Nov. 19, 1954.

The Tax Court of the United States.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Comes now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the amended petition filed herein admits, alleges, avers, and denies as follows:

I and II. Admits the allegations set forth in paragraphs I and II of the amended petition.

II. Denies the allegations set forth in paragraph I of the amended petition.

IV to XVI. Denies the allegations of error and fact set forth in paragraphs IV to XVI, inclusive, and all subparagraphs thereunder of the amended petition.

XVII. (a) Admits the allegations set forth in subparagraph (a) of paragraph XVII of the amended petition.

XVII. (b) Denies the allegations set forth in subparagraph (b) of paragraph XVII of the amended petition.

XVII. (c) Admits the allegations set forth in subparagraph (c) of paragraph XVII of the amended petition.

XVII. (d) to (k) Denies the allegations set forth in subparagraphs (d) to (k), inclusive, of paragraph XVII of the amended petition.

XVIII to XXVIII. Denies the allegations set forth in paragraphs XVII to XXVIII, inclusive, and all subparagraphs thereunder of the amended petition.

XXIX. Admits the allegations set forth in paragraph XXIX of the amended petition.

XXX. Neither admits nor denies the allegations set forth in paragraph XXX of the amended petition inasmuch as no pleadings are required with respect to petitioner's prayer.

XXXI. Denies generally and specifically each and every allegation set forth in the amended petition not hereinbefore admitted, qualified, or denied.

Further answering the amended petition filed herein, respondent affirmatively alleges, avers, and asserts as follows:

XXXII. The petitioner is liable for the 50% penalty prescribed by section 293(b), Internal Revenue Code, in connection with his liability for income taxes for the taxable years 1941, 1942, and 1944 to 1947, inclusive, and income and victory tax for the taxable year 1943.

XXXIII. The respondent relies upon the following facts and affirmatively alleges:

(a) During the taxable years 1941 to 1947, inclusive, the petitioner resided at Augusta, Georgia where he worked for wages, engaged in real estate activities, and other miscellaneous activities.

(b) The petitioner, with wilful intent to evade Federal income taxes, filed false and fraudulent income tax returns for each of the taxable years 1941 to 1946, inclusive, and failed to file a return for the taxable year 1947. For these taxable years the petitioner's correct taxable income and his taxable income as disclosed by said false and fraudulent returns were as follows:

Taxable Year	Taxable Income Disclosed on Return	Correct Taxable Income
1941	$ 1,426.03	$ 8,141.88
1942	2,390.80	16,465.77
1943	2,060.91	16,002.11
	2,761.16*	16,192.11*
1944	4,754.05	7,030.32
1945	4,171.70	45,844.26
1946	1,596.01	39,966.01
1947	No return filed	53,154.00

(c) For the taxable years 1941 to 1947, inclusive, the petitioner did not maintain books of account or other records which adequately reflect or disclose the correct taxable income which he received from the various business activities in which he was engaged.

*Victory tax net income.

(d) In the notice of deficiency respondent has determined the petitioner's correct taxable income for the taxable years 1941 to 1947, inclusive, by the increase in net worth plus personal expenditures method, and in making this determination respondent has utilized all records, memoranda, and other sources of information that were available.

(e) The following schedule reflects petitioner's correct taxable income for the taxable years 1941 to 1947, inclusive:

	1940	1941	1942	1943	1944	1945	1946	1947
Assets								
Cash in Banks:								
C & S Natl. Bank, Augusta, Ga.	$ 61.25	$ 36.41	$ 38.96	$ 38.96	$ 38.96	$ 243.06	$ 550.93	$ 1,082.91
Ga. R.R. Bank & Trust Co., Augusta, Ga.	207.63	1,613.27	269.52	510.27	344.05	442.17	617.67	760.77
Security Deeds & Notes recorded in following counties:								
Aiken, S.C.	1,250.00	3,294.35	4,788.62	4,820.54	3,284.70	30,645.67	38,166.92	36,129.31
Richmond, Ga.	2,241.00	5,500.00	6,621.75	8,774.72	10,713.20	21,726.72	36,352.93	105,913.24
Jefferson, Ga.	1,715.80	1,715.80	425.00	—	—	—	107.00	107.00
Burke, Ga.	500.00	500.00	500.00	—	—	—	—	—
Other Loans	523.56	523.56	508.56	413.56	460.00	253.00	253.00	—
Real Estate Holdings situated & recorded in following counties:								
Aiken, S.C.	32,775.02	34,275.02	30,525.85	30,525.85	30,525.85	16,610.00	12,231.60	6,481.60
McCormick, S.C.	—	—	—	—	—	—	1,225.00	1,225.00
Richmond, Ga.	22,483.92	23,983.92	29,921.13	29,720.16	44,572.95	33,801.01	27,756.79	30,528.67
Jefferson, Ga.	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00
Richmond, Ga. (houses in subdiv. not incl. above)	—	—	18,000.00	18,000.00	18,000.00	18,000.00	—	—
Richmond, Ga. (houses in subdiv. not incl. above)	—	—	—	6,000.00	6,000.00	6,000.00	—	—
Construction in progress or finished for sales (12 houses @ $4,000.00 each)	—	—	—	—	—	—	48,000.00	—
Construction in progress or finished for sales (3 houses @ $4,000.00 each)	—	—	—	—	—	—	—	12,000.00
Investments in securities—Stock and Bonds	3,004.40	3,004.40	1,520.50	5,400.75	6,973.75	23,764.45	29,144.70	41,697.20
Total Assets	$ 67,062.58	$ 76,746.73	$ 95,419.89	$106,504.81	$123,213.46	$153,786.08	$196,706.54	$238,225.70

Liabilities								
Notes Payable:								
C & S Natl. Bank, Augusta, Ga.	$ 1,721.45	$ 405.06	$ 1,316.37	$ —	$ 2,019.90	$ 1,275.00	$ 5,522.92	$ 2,025.00
Ga. R.R. Bank & Trust Co., Augusta, Ga. (Uptown Branch)	506.25	3,594.39	1,468.26	1,518.75	6,325.83	1,761.46	6,869.00	2,025.00
Other Notes Payable	800.00	600.00	4,350.00	—	1,500.00	—	—	—
Reserve for Depreciation:								
Richmond County	6,550.26	7,234.76	7,874.26	8,554.60	9,457.60	5,242.84	3,900.17	4,103.17
Jefferson County	720.00	780.00	840.00	900.00	960.00	1,020.00	1,080.00	1,140.00
Aiken County	3,484.06	4,513.08	4,848.42	5,776.77	6,705.12	3,430.01	2,591.67	706.67
Richmond County	—	—	360.00	1,200.00	2,160.00	3,120.00	840.00	1,080.00
Total Liabilities	$ 13,782.02	$ 17,127.29	$ 21,057.31	$ 17,950.12	$ 29,128.45	$ 15,849.31	$ 20,803.76	$ 11,079.84
Net worth	$ 53,280.56	$ 59,619.44	$ 74,362.58	$ 88,554.69	$ 94,085.01	$137,936.77	$175,902.78	$227,145.86
Deduct Prior Year		53,280.56	59,619.44	74,362.58	88,554.69	94,085.01	137,936.77	175,902.78
Net Increase		$ 6,338.88	$ 14,743.14	$ 14,192.11	$ 5,530.32	$ 43,851.76	$ 37,966.01	$ 51,243.08
Add Personal Withdrawals		2,000.00	2,000.00	2,000.00	2,000.00	2,500.00	2,500.00	3,000.00
		$ 8,338.88	$ 16,743.14	$ 16,192.11	$ 7,530.32	$ 46,351.76	$ 40,466.01	$ 54,243.08
Less: Nontaxable income sale of securities		—	77.37	—	—	7.50	—	589.08
		$ 8,338.88	$ 16,665.77	$ 16,192.11	$ 7,530.32	$ 46,344.26	$ 40,466.01	$ 53,654.00
Less: Allowable contributions		197.00	200.00	190.00	—	—	—	—
Standard deduction		—	—	—	500.00	500.00	500.00	500.00
Taxable Net Income		$ 8,141.88	$ 16,465.77	$ 16,002.11	$ 7,030.32	$ 45,844.26	$ 39,966.01	$ 53,154.00

(f) The increase in petitioner's net worth plus amounts expended for nondeductible personal living expenses, less nontaxable income from sale of securities, allowable contributions, the standard deduction, and the amounts disclosed as taxable income on his returns for the taxable years 1941 to 1947, inclusive, represents taxable income which petitioner omitted from such returns with wilful intent to evade taxes.

(g) By reason of petitioner's failure to return his correct taxable income for the taxable years 1941 to 1947, inclusive, there are now due from petitioner deficiencies in income tax and penalties as set forth in the notice of deficiency, a copy of whch is attached to the original petiton and whch is incorporated herein by reference and made a part hereof the same as if set forth in full. A part of the deficiency for each year as set out in the notice of deficiency is due to fraud on the part of petitioner with intent to evade taxes.

XXXIV. Under the provisions of section 276(a), Internal Revenue Code, the assessment and collection of the deficiencies asserted by the respondent in the notice of deficiency dated March 28, 1951 for the years 1941, 1942, and 1943 are not barred for the reason that false and fraudulent returns were filed for each of said years.

Wherefore, it is prayed that the appeal be denied and that the respondent's determination be in all respects approved.

(Signed) DANIEL A. TAYLOR, FVH,
(Daniel A. Taylor),
Chief Counsel, Internal Revenue Service.

Of Counsel:
WILLIAM H. LOEB,
Regional Counsel,
RALPH V. BRADBURY, JR.,
Special Attorney,
Internal Revenue Service,
Peachtree-Seventh Bldg.,
Atlanta 5, Ga.
RVB/ejb 11/17/54.

REPLY.

Received The Tax Court of the United States 1954 Dec. 30 PM 12 32.

Filed Dec. 30, 1954.

The Tax Court of the United States.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Now Comes the petitioner, by his attorneys, and for reply to the respondents answer to the amended peti-

tion filed in this proceeding admits, alleges and denies as follows:

XXXII. Denies the allegations of paragraph XXXII of the answer to the amended petition.

XXXIII. (a) through (g). Denies the allegations of paragraph XXXIII of the answer to the amended petition and all sub-paragraphs thereunder.

XXXIV. Denies the allegations of paragraph XXXIV of the answer to the amended petition.

Wherefore, petitioner prays that the answer to the amended petition be denied and that his appeal in all respects be sustained.

L. EUGENE McNATT,
(L. Eugene McNatt),
Attorney for Petitioner.

1345 Citizens & Southern Bank Bldg.,
Atlanta, Georgia.
Of Counsel:
EDWARD C. CUSHMAN,
Aiken, S. C.
THOMAS R. SPILLANE, CPA,
Savannah Bank & Trust Bldg.,
Savannah, Georgia.

AMENDMENT TO ANSWER TO AMENDED PETITION.

Lodged Aug. 29, 1955.

Filed Aug. 30, 1955.

The Tax Court of the United States.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Comes now the Commissioner of Internal Revenue by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, and amends his answer to amended petition by inserting after paragraph XXXIV the following:

XXXV. Respondent affirmatively claims under section 272(e), Internal Revenue Code of 1939, that for the taxable year 1943 the petitioner is liable for the additions to the tax as provided in section 294(d)(1)(A), Internal Revenue Code of 1939, relating to failure to file a declaration, and section 294(d)(2), Internal Revenue Code of 1939, relating to substantial underestimate of estimated tax, in the respective amounts of $322.70 and $276.60 or a total increase in deficiencies over the amount stated in the statutory notice of deficiency for the taxable year 1943 in the amount of $599.30.

XXXVI. In support thereof the respondent relies upon the following facts and affirmatively alleges:

Correct tax liability per statutory notice		$ 4,861.45
Less: Withholding	$ 175.10	
Payments on 1942 tax	76.35	251.45
Estimated tax payable quarterly		$ 4,610.00
Due each installment		$ 1,152.50

Computation of penalties:

March 15 installment unpaid for more than 6 months at 10%	$ 115.25
June 15 installment unpaid for more than 6 months at 10%	115.25
Sept. 15 installment unpaid for more than 4 months at 8%	92.20
Addition to tax under Sec. 294(d)(1)(A), Internal Revenue Code of 1939	$ 322.70
Addition to tax under Sec. 294(d)(2), Internal Revenue Code of 1939, for underestimate of estimated tax (6% of $4,610.00)	$ 276.60

XXXVII. Respondent affirmatively claims under section 272(e), Internal Revenue Code of 1939, that for the taxable year 1946 the petitioner is liable for the additions to the tax as provided in section 294 (d)(2), Internal Revenue Code of 1939, relating to substantial underestimate of estimated tax in the amount of $1,052.85, such amount representing an increase in deficiencies over the amount stated in the statutory notice of deficiency for the taxable year 1946.

XXXVIII. In support thereof the respondent relies upon the following facts and affirmatively alleges:

Correct tax liability per statutory notice		$17,747.47
Less: Tax withheld	$ 79.90	
Payment on estimated tax ..	120.00	199.90
Balance		$17,547.57
Addition to tax under Sec. 294(d)(2), Internal Revenue Code of 1939, for underestimate of estimated tax (6% of $17,547.57)		$ 1,052.85

XXXIX. Respondent affirmatively claims under section 272(e), Internal Revenue Code of 1939, that for the taxable year 1947 the petitioner is liable for the additions to the tax as provided in section 294 (d)(1)(A), Internal Revenue Code of 1939, relating to failure to file a declaration, and section 294(d)(2), Internal Revenue Code of 1939, relating to substantial underestimate of estimated tax, in the respective amounts of $2,653.24 and $1,591.94 or a total increase in deficiencies over the amount stated in the statutory notice of deficiency for the taxable year 1947 in the amount of $4,245.18.

XL. In support thereof the respondent relies upon the following facts and affirmatively alleges:

Correct tax liability per statutory notice	$26,532.30
Estimated tax payable quarterly	$26,532.30
Each installment	$ 6,633.07

Computation of penalties:		
March 15 installment unpaid for more than 6 months at 10% ..	$ 663.31	
June 15 installment unpaid for more than 6 months at 10% ..	663.31	
Sept. 15 installment unpaid for more than six months at 10%	663.31	
Jan. 15, 1948 installment unpaid for more than 6 months at 10% (no return filed)	663.31	
Additions to tax under Sec. 294(d)(1)(A), Internal Revenue Code of 1939, for failure to file declaration of estimated tax		$ 2,653.24
Addition to tax under Sec. 294(d)(2), Internal Revenue Code of 1939, for underestimate of estimated tax (6% of $26,532.30)		$ 1,591.94

XLI. In further support of respondent's claim for increased deficiencies by virtue of the imposition of additions to tax under section 294(d)(1)(A), Internal Revenue Code of 1939, for the taxable years 1943 and 1947 and for additions to the tax under section 294 (d)(2), Internal Revenue Code of 1939, for the taxable years 1943, 1946 and 1947 respondent alleges and avers as follows:

(a) On January 14, 1944 petitioner filed his 1943 income tax return, Form 1040, wherein he stated his income tax net income for 1943 to be $2,060.91, his victory tax net income to be $2,761.16, and his total income and victory tax liability to be $180.29.

(b) The respondent has determined that the petitioner had taxable net income for 1943 in the amount of $16,002.11, and a correct income and victory tax liability in the amount of $4,861.45.

(c) For the taxable year 1943, petitioner did not file a declaration of estimated tax as required by section 58(a), Internal Revenue Code of 1939, nor did he file an amendment of declaration as permitted under section 58(d), Internal Revenue Code of 1939.

(d) For the taxable year 1943, petitioner made no payments of estimated tax as required or permitted by section 59, Internal Revenue Code of 1939.

(e) On March 15, 1947 petitioner filed his 1946 income tax return, Form 1040, wherein he stated his adjusted gross income for 1946 to be $1,596.01 and that he was subject to no tax liability for 1946.

(f) The respondent has determined that the petitioner had taxable net income for 1946 in the amount of $39,966.01 and a correct income tax liability in the amount of $17,747.47.

(g) For the taxable year 1946, petitioner in May 1946 filed a declaration of estimated tax.

(h) The declaration filed in May 1946 for the taxable year 1946 disclosed an estimated tax liability for such year in the amount of $120.00. No amended declaration of estimated tax was filed by petitioner for 1946.

(i) Petitioner's estimate of $120.00 as his tax liability for 1946 was paid by virtue of a credit of $68.92 arising from petitioner's computaton of a claimed overpayment of his 1945 income tax and the payment of $51.08 on September 12, 1946.

(j) For the taxable year 1947 petitioner did not file an income tax return, Form 1040.

(k) The respondent has determined that the petitioner had taxable net income for 1947 in the amount of $53,154.00 and a correct income tax liability in the amount of $26,532.30. No payment of this liability has ever been made by the petitioner except for payment of $10,000.00 on February 23, 1950 which is held by the District Director of Internal Revenue, Atlanta, Georgia in a suspense unit.

(l) For the taxable year 1947, petitioner did not file a declaration of estimated tax as required by section 58(a), Internal Revenue Code of 1939, nor did he file an amendment of declaration as permitted under section 58(d), Internal Revenue Code of 1939.

(m) For the taxable year 1947, petitioner made no payments of estimated tax as required or permitted by section 59, Internal Revenue Code of 1939.

XLII. Respondent affirmatively claims in the alternative that if the Court should find there is no penalty applicable under section 293, Internal Revenue Code of 1939, for the taxable year 1942 then the respondent is entitled to have petitioner's tax liability for the year 1943 recomputed pursuant to the provisions of section 6 of the Current Tax Payment Act of

1943. Respondent claims the increased deficiency of $2,422.23 over the amount shown in the notice of deficiency resulting therefrom pursuant to section 272 (e), Internal Revenue Code of 1939;

XLIII. In support thereof the respondent relies upon the following facts and affirmatively alleges:

(a) Correct income tax and victory tax for 1943 per notice of deficiency		$ 4,861.45
Add: ¼ of 1942 tax per statutory notice (¼ of $4,623.26)		1,155.82
Correct income tax and victory tax liability		$ 6,017.27
Less: Tax liability per 1943 return		180.29
Deficiency for 1943 if Court finds no fraud in 1942		$ 5,836.98
Addition to the tax under section 293(b) (50% of $5,836.98)		$ 2,918.49
(b) Correct income tax and victory tax liability		$ 6,017.27
Less: Prepayment credits		251.45
Balance subject to additions to tax under Sec. 294(d)(1)(A) and Sec. 294(d)(2) ..		$ 5,765.82
Computation of additions to tax:		
March 15 installment unpaid more than 6 months at 10%	$ 144.15	
June 15 installment unpaid more than 6 months at 10%	144.15	
Sept. 15 installment unpaid more than 4 months at 8%	115.32	

Addition to tax under sec. 294(d)(1)(A), Internal Revenue Code of 1939, for failure to file declaration	$ 403.62

Addition to tax under Sec. 294(d)(2), Internal Revenue Code of 1939, for underestimate of estimated tax (6% of $5,765.82)	$ 345.95

(c)	Income and Victory Tax	Sec. 293 (b)	Sec. 294 (d)(1)(A)	Sec. 294 (d)(2)
Deficiency as computed in (a) and (b)	$ 5,836.98	$ 2,918.49	$ 403.62	$ 345.95
Less: Deficiency per statutory notice	4,721.87	2,360.94	0	0
Increased deficiencies	$ 1,115.11	$ 557.55	$ 403.62	$ 345.95

Wherefore, it is prayed that respondent's determination be in all respects approved and that the increased deficiencies resulting from the imposition of the additions to tax under section 294(d)(1)(A) and section 294(d)(2), Internal Revenue Code of 1939, over the amount shown in the notice of deficiency be approved. If the Court determines that the petitioner is not subject to the addition to the tax under section 293, Internal Revenue Code of 1939, for the taxable year 1942 but is subject to such addition for the taxable year 1943 it is prayed alternatively that the Court approve respondent's determination set forth in paragraphs XLII and XLIII.

JOHN POTTS BARNES, F.V.H.,
(John Potts Barnes),
Chief Counsel, Internal Revenue Service.

Of Counsel:
WILLIAM H. LOEB,
Regional Counsel,
HERMAN WOLFF, JR.,
Special Attorney,
Internal Revenue Service,
Peachtree-Seventh Building,
Atlanta 23, Georgia.

REPLY TO AMENDMENT TO ANSWER.

Filed Oct. 10, 1955.

The Tax Court of the United States.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Comes Now the petitioner and for reply to respondent's amendment to the answer in this proceeding admits and denies as follows:

XXXV. Denies the allegations of paragraph XXXV.

XXXVI. Denies the allegations of paragraph XXXVI.

XXXVII. Denies the allegations of paragraph XXXVII.

XXXVIII. Denies the allegations of paragraph XXXVIII.

XXXIX. Denies the allegations of paragraph XXXIX.

XL. Denies the allegations of paragraph XL.

XLI (a) through (m). Denies the allegations of Paragraph XLI (a) through (m).

XLII. Denies the allegations of paragraph XLII.

XLIII. (a) through (c). Denies the allegations of paragraph XLIII (a) through (c).

Wherefore, petitioner prays that the amendment to the answer be denied.

L. EUGENE McNATT,
(L. Eugene McNatt),
Attorney for Petitioner.
1345 Citizens & Southern Bank Building,
Atlanta, Georgia.

Of Counsel:
E. C. CUSHMAN, JR.,
Aiken, S. C.
THOMAS R. SPILLANE, CPA,
Savannah, Georgia.

STIPULATION OF FACTS.

Lodged Nov. 7, 1955.

Filed Nov. 14, 1955.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson, Petitioners,
v. Docket No. 35385.
Commissioner of Internal Revenue, Respondent.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

It is hereby stipulated and agreed by and between the parties hereto, by their undersigned counsel, that for the purposes of these proceedings the following facts are to be taken as true and correct; provided, however, that either party has the right to object upon the grounds of materiality and relevancy to any of said facts. The stipulation of these facts is in no way intended to effect stipulations made at the hearing of these proceedings except insofar as the stipulation made at the hearing are inconsistent with the facts contained herein.

1. There is attached hereto as joint Exhibit 9-P a schedule of properties owned by the petitioner, L. T. Anderson, and situated in Aiken County, South Carolina. This joint Exhibit shall be substituted for the joint Exhibit 9-P filed at the hearing of these proceedings.

2. There is attached hereto as joint Exhibit 11-R a schedule of properties owned by the petitioner, L. T. Anderson, and situated in Richmond County, Georgia. This joint Exhibit shall be substituted for the joint Exhibit 11-R filed at the hearing of these proceedings. The parties are in agreement with the amounts contained therein except for the amounts appearing after the property described as "Sand Bar Ferry Road—Land" for the years 1946, 1947 and 1948. The amounts appearing in joint Exhibit 11-R, namely, $4,508.78, $2,996.22 and $2,449.30, respectively, represent amounts submitted by the petitioner; whereas the respondent contends and has so determined in his notice of deficiency that these amounts are $4,326.00, $2,447.88 and $1,900.96, respectively.

3. With respect to Exhibit 19 presented at the hearing and in particular to the year 1947 the parties hereto agree that at the close of 1947 petitioner, L. T. Anderson, had on hand the two houses listed as being disposed of to Massey and Martin in 1948. The $2,000.00 included after the name "Merchant" for the year 1947 is in error and shall be deleted from Exhibit 19. The parties are in agreement that the house located at 400-402 Sand Bar Ferry Road was owned by L. T. Anderson at the close of 1947 but disagree as to the amount at which it should be shown at the end of such year. Petitioners contend that the amount is $2,000.00, whereas respondent contends that the amount is $5,700.00. The parties hereto are in agreement as to all other amounts with respect to all other years appearing in said Exhibit 19.

4. The three houses owned by petitioner, L. T. Anderson, at the close of 1948 and located at 403,407

and 409 Colorado Avenue each have a cost basis of $5,200.00. These houses are shown on petitioner's Exhibit 20 at $5,200.00 each and on page 3 of schedule 9 of respondent's Exhibit A at $4,000.00 each.

5. There are attached hereto as joint Exhibits 40-LL, 41-MM, 42-NN and 43-OO depreciation schedules of properties owned by petitioner, L. T. Anderson.

(S.) L. EUGENE McNATT,
(L. Eugene McNatt),
Counsel for Petitioners.

(S.) JOHN POTTS BARNES, HW,
(John Potts Barnes),
Chief Counsel, Internal Revenue Service, Counsel for Respondent.

PROCEEDINGS.

Filed Oct. 31, 1955.

(Title Omitted.)

Hearing at Columbia, South Carolina.

Date October 11, 1955.

In the Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson and Lewis Thurston Anderson, Petitioner,

vs.

Commissioner of Internal Revenue, Respondent.

Docket No. 35385, Docket No. 35386.

United States Courthouse,
Columbia, South Carolina,
Tuesday, October 11, 1955.

The above-entitled matters came on for hearing, pursuant to notice, at 10:05 o'clock a.m.

Before: Honorable Craig S. Atkins.

Appearances:

E. C. Cushman, Jr., Esq.; L. E. McNatt, Esq., and T. R. Spillane, Esq., for the Petitioner.

Herman Wolff, Jr, Esq., for the Respondent.

The Clerk:
Docket 35385, Lewis Thurston Anderson and Clyde Velma Anderson; Docket 35386, Lewis Thurston Anderson. Kindly state your appearances for the record.

Mr Wolff:
Herman Wolff for the Respondent.

Mr. Cushman:
E. C. Cushman, Jr.; L. E. McNatt; and T. R. Spillane for the Petitioner.

The Court:
Do you care to make a statement, Mr. Cushman? Who should make the opening statement?

Mr. Wolff:
Mr. Cushman alleges it is a question of the deficiencies also involved other than fraud.

Mr. Cushman:
We would be happy to go forward with an opening statement. By making an opening statement we would not like to waive any rights which we might have in asserting upon whom the burden to proceed presently rests.

The Court:
That is understood.

Mr. Cushman:
There are two cases here. I assume both cases will be tried together.

Mr. Wolff:

No objection, Your Honor.

The Court:

You move that the two cases be consolidated for hearing and decision?

Mr. Wolff:

Yes, Your Honor.

Mr. Cushman:

I think it is a practical matter.

The Court:

The motion is granted.

Mr. Cushman:

If Your Honor please, the two cases involved here presently before the Court involve income taxes and deficiencies for the years 1941 through 1948. The amount of the proposed deficiencies for the specific years appear in the pleadings, and we think it would be a fair statement to say that the greater portion of those amounts are in issue. In addition there are certain penalties, deficiency penalties and fraud penalties, asserted in this case.

The Petitioner is an individual. Both Petitioners, as a matter of fact, are individuals; residents of the State of Georga. They live down in Augusta, Georgia. That is the first case. In the second case, Docket 35386, the Petitioner is the husband in the first case. I don't know how they got misnumbered in the docket. They are not in chronological order. The Petitioners are man and wife in Georgia.

Now if Your Honor please, there are six broad areas of disagreement in this case or six broad areas which give rise to the issues in this case. The first of these areas can probably best be defined as that relating to the Statute of Limitations. With reference to the years 1941, 1942, and 1943 the assessment collection of taxes for those years we submit is barred by the Statute of Limitations. So that would be the first area which would give rise to an issue before this Court.

That brings us to the second area giving rise to issues in this case, and that is the matter of fraud. Fraud is asserted by the Commissioner for each and every one of the years in question, 1941 through 1948. So that is the second area.

The third area giving rise to issues can best be characterized by Section 117-J as to whether or not the Petitioner, with reference to certain rental properties which he occasionally held as much as twenty years, whether or not that constitutes a disposal of assets under Section 117-J so he would be entitled to the gains on the sale of that particular real estate. That is the third area.

The fourth area giving rise to issues, I will just mention at this point that the fourth area can best be described as a fact. We do not think the Government net worth statement is accurate. We will come back to that in just a moment and give you some of the details as to why we think the net worth statement is incorrect.

The fifth area giving rise to issues is whether or not the Petitioner is entitled to the installment method of sales method of computing his tax; whether or not, in fact, the Petitioner is entitled to the installment.

The sixth area is the 25 per cent deficiency penalty based on the negligence of the Petitioner in not filing, not having reasonable cause for failing to file a tax return for the year 1947. That is in addition to the fraud penalty for that particular year.

The Court:

Just one year?

Mr. Cushman:

Yes, Your Honor, just the year 1947. That is the only year.

Now if Your Honor please, those are the six areas. We have tried to define them. We are well aware of the fact that that constitutes a major portion of the Internal Revenue Code, but it is well to have an understanding that that is what we are arguing about.

Going back to the fourth area and giving you the specific subareas of disagreement, we think that there are several questions involved in determining whether or not the net worth statements prepared by the agents or the Commissioner are accurate. First of all there is a matter of the valuation. Sub-area one, the valuation of notes receivable which the Petitioner acquired in the course of disposing of real estate holdings. We say that those notes were worth or were not worth so much. The Commissioner disagrees. So there is a question of the valuation of the notes receivable.

The second sub-area that we maintain gives rise to issues out of the net worth statement is the fact that the Commissioner has not allowed to the taxpayer the full cost of the properties which were sold.

The third sub-area under area four, we maintain that the Commissioner has not allowed to the Peti-

tioner the benefit of all of his liabilities which were outstanding at various and sundry times at the end of the years.

The fourth point under area four, we believe that the Commissioner has made an erroneous determination of what constitutes a proper depreciation reserve. We think the depreciation has not been properly handled.

The fifth sub-area, we maintain most vigorously that the Commissioner has included in the net worth statements of the Petitioner certain assets which were not those of the Petitioner but which in reality belonged to persons other than the Petitioner himself.

The sixth point of disagreement with the net worth report, we maintain that there have been included as assets both the real estate which was in fact sold and the notes receivable which the Petitioner received from the sale of real estate; in other words, a duplication of assets.

Now there are various and other sundry items which we disagree on with the Commissioner, but I think that for the purposes of this particular opening statement that should define for the Court as best we can the broad areas out of which the issues will come.

Now would Your Honor want to ask me any questions or want me to elaborate?

The Court:

I think not. Do you have any idea of how long it will take to try your side of the case, Mr. Cushman?

Mr. Cushman:

If Your Honor please, in order to be completely fair with the Court, I am sure you have seen many

witnesses examined. I do not think a lawyer can tell how long it is going to take to examine a witness who has never been in Court and is scared to death. I would say probably a day would be consumed, and that would be a conservative estimate. The day would be consumed in presenting the Petitioner's side of the case.

Now there is one other point which I would like to bring up at this time so there will be no question of waiver. We respectfully submit for the Court's consideration that the burden of proceeding in this case is upon the Commissioner, that this morning the Commissioner should go forward with his evidence, for these reasons:

As a practical matter, the Commissioner's case is built on an opening net worth of the year 1940. The first three years are barred by the Statute. There is no dispute about that fact unless the Commissioner can establish fraud. So for the first three years the burden is on him to open up discussion. We think that where the burden is placed on the Commissioner by the Statute with reference to this fraud issue in the case, that as a practical matter and as a matter of justice the Commissioner should proceed.

Furthermore, we think that the Commissioner's answer alleges a great many affirmative facts to be classified almost as new matter. When the statutory notice came out it said "based on information on file in this office." We eventually received what was apparently a complete revenue agent's report, but there have been a lot of allegations from the Commissioner's answer which constitute matter which he has undertaken to prove. Under the rules we think that

the Commissioner for that reason, having made these affirmative allegations, that the burden of proceeding should be upon him.

Specifically in his answer, starting with Paragraph 31 and going on through Paragraph 33-C, the Commissioner has made numerous affirmative allegations. The burden of proof is upon the Respondent. Also with particular reference to Paragraph 33-E, the Respondent alleges certain facts to be true which consist of numerous almost new matter on which the burden of proof is and should be on the Commissioner. Now we think that—

The Court:

Are those for the purpose of increased deficiency?

Mr. Cushman:

Well if Your Honor please, it would be very difficult to say what that purpose was. We hope that they will tell us what the purpose was. Perhaps I can best show Your Honor what they look like.

This is the consolidated statement which appears in the Commissioner's answer. Actually, the revenue agent's report is twenty-seven pages and all the pages are bigger than this one. They put a consolidated statement of the revenue agent's report into their answer, and they have stated that this is so and this is so, and you did this and did not do this. We think that it might be a good idea to let them go ahead and see exactly what they do intend to prove with this statement.

In discussing the matter with my colleagues, apparently the entire case for the Government is contained in this statement here, which in the original form is twenty-seven pages. This is a summary of

that. The fact that this is a fraud issue and so on, we think that as a matter of justice the Commissioner should have the burden of the proceeding. He has raised the majority of the issues in the case. We so move.

The Court:

Does that complete your opening statement?

Mr. Cushman:

Yes, sir, I believe so. I have a couple of helpmates, and if you don't mind I will check with them.

That is it, Your Honor.

The Court:

Mr. Wolff.

Mr. Wolff:

These cases, Your Honor, are two docket numbers which have been consolidated for hearing and for briefing purposes. For all purposes these two cases involve the income tax liability of Lewis Thurston Anderson for the taxable years 1941 through 1947 and the income tax liability of Lewis Thurston Anderson and his wife Clyde Velma Anderson for the taxable year 1948.

The years 1941 to 1948, the deficiencies in income tax are in the respective amounts as follows:

1941	$ 838.80
1942	4,477.86
1943	4,721.87
1944	744.79
1945	23,552.32
1946	17,747.47
1947	26,532.30
1948	10,968.96

The deficiency stated for 1943 is an income tax and victory tax liability as had been determined by the Commissioner of Internal Revenue.

For each of the years 1941 to 1948, inclusive, there has been asserted and determined that Petitioners are liable for 50 per cent addition to the tax as authorized by Section 293(b), Internal Revenue Code of 1939, in cases of fraud and on the part of the Petitioners with intent to evade tax in the respective amounts as follow:

1941	.....	$ 419.40
1942	.....	2,238.93
1943	.....	2,360.94
1944	.....	372.40
1945	.....	11,776.16
1946	.....	8,873.74
1947	.....	13,266.15
1948	.....	5,584.48

Inasmuch as the Petitioner, Lewis Thurston Anderson, failed to file a return for the year 1947, 25 per cent of the tax for that year or $6,633.08 has been added to the deficiency in income tax for that year in accordance with the provisions of Section 291(a) of the Internal Revenue Code of 1939.

On August 30, 1965, this Court granted motions to file in each of these docketed cases permitting the Respondent to file amendments to the answers to amended petition in each case. In the amendment in Docket No. 38386, Respondent claimed under Section 272(e) of the Internal Revenue Code of 1939, increased deficiencies in 1943 and 1947 arising from the application of Section 294(d)(1)(A) relating to failure to file a declaration of estimated tax in the respective amounts of $322.70 and $2,653.24.

Increased deficiencies were also claimed for 1943, 1946, and 1947 arising from the application of Section 294(d)(2) relating to substantial underestimates of estimated tax in the respective amounts of $276.60 and $1,052.85. That was also for 1943 and 1946 and 1947 in the amount of $1,591.94. This amendment also set forth an alternative position and claimed increased deficiencies for 1943 in the event this Court should determine that Lewis Thurston Anderson's deficiency for 1942 was not due to fraud with the intent to evade tax and thus necessitating a recomputation of his income tax liability for 1943 under Section 6 of the current Tax Payment Act of 1943.

The amendment to the answer to the amended petition in Docket No. 35385 claimed under Section 272(e) an increased deficiency in 1948 in the total amount of $2,088.39 arising from the application of Section 294 (d)(1)(A) and Section 294(d)(2), relating respectively to failing to file a return and substantially underestimating an estimation of tax. The increase attributable to Mr. Anderson's failure to file a declaration of estimated tax is $1,305.24, and the increase attributable to their underestimation of estimated tax is $783.15.

The Respondent is prepared to stipulate at this time that Petitioner, Lewis Thurston Anderson, did file a declaration in 1943—a declaration of estimated tax—and the Respondent will withdraw the claim asserted for increased deficiencies for 1943 in the amount of $322.70 for his failure to file a declaration.

The statutory notices in these cases were issued on March 28, 1951.

The cases were originally set to be heard on the calendar commencing in Atlanta, Georgia, on September 22, 1952. They were continued from that cal-

endar upon motion filed by Petitioners' counsel to Columbia, South Carolina. The Respondent did not object to this. The case was next set for hearing in Columbia, South Carolina, on September 20, 1954. Upon call for hearing, Petitioners' counsel moved that the case be continued on the grounds that Petitioner had had the net worth schedule and supporting statements for a period of only two months. They had not been furnished to the counsel for Petitioner until July of 1954.

Certain representations were made to the Court at that time concerning Petitioner's inability to locate one witness, and statements were made concerning the settlement possibilities of the case. The Respondent opposed the granting of the continuation in September 1954, but in view of the Petitioners' statement the case was continued by the Court. It is now thirteen months later. Some of the witnesses are getting older and they are more difficult to locate as time goes on.

The investigation was completed over five years ago and the statutory notice issued over four years ago. The Petitioner has had in his possession the net worth statement and all of the supporting schedules for fifteen months. The cases are no closer to settlement today than they were five years ago.

With respect to a stipulation of fact, in September 1954 Petitioners' counsel notified Respondent that Petitioner himself, Lewis Thurston Anderson, would not permit the entering into of the stipulation. In August of this year Respondent again met with Petitioner's counsel and considerable progress was made with respect to a stipulation.

The primary stipulation contemplated other than the agreement with respect to certain bank accounts,

that with respect to Petitioner's position each party would stipulate what was appearing on such records. This decision was reached in conference with Petitioner and Petitioner's counsel on August 24, 1955. Petitioner at that time agreed to submit certain schedules for inclusion in the stipulation. These were received by the Respondent on September 26, 1955, and returned to the Petitioner on October 3, 1955, for approval and with the suggestion that counsel for Petitioner meet in Columbia, South Carolina, with counsel for Respondent on either October 6, 7, or 8 of this year.

The next contact that Respondent had with Petitioner's counsel at which a stipulation was discussed was yesterday afternoon around four o'clock. The Petitioner at that time presented about twenty or twenty-five schedules which he was prepared to stipulate. These schedules, although derived to a large extent from the Respondent's net worth schedules and supporting papers, departed drastically from the previously discussed position and were submitted back and forth to each other.

For example, when prior discussions contemplated with respect to a particular item a single schedule, why there were perhaps two or three schedules presented yesterday embodying the one schedule which had previously been discussed. In addition, the Petitioner at that time, yesterday afternoon, presented numerous other schedules which had never been discussed with the Respondent or between the Respondent and Petitioner with the thought that the Respondent should be expected to stipulate these also.

The explanation about what each of these schedules represented lasted until after six o'clock last night.

We adjourned for dinner and met again around eight thirty, at which time it was agreed that it would take many hours to reconcile the Respondent's original net worth schedule with the schedule presented at that point. Counsel for Respondent took the position at that time that it was too late, that time did not permit the enering into of a formal stipulation. It did not seem to Respondent's counsel that it was necessary to spend six or seven hours on the eve of the trial when we have had fifteen months and could have brought in other things that they wanted to stipulate.

There are several issues which are involved in this proceeding, and Mr. Cushman has very ably presented some of them. Of course there are substantial disagreements with other statements he made with respect to some of the issues. The first issue raised by the pleadings with respect to Docket No. 35385 involving the years 1941 to 1947 were with respect to 1941, 1942, and 1943. The Respondent's position is that the Statute of Limitations is not applicable since the Petitioner in these years was under an estimation of tax and the resulting deficiencies arising from the underestimate or underestimates are due to fraud with intent to evade tax. The proper application of Section 293(b) relating to the fraud penalty has been raised with respect to each of the years before the Court. Respondent's computation has been made. This computation will be referred to more fully in a few minutes.

There are indications on the returns filed by the Petitioner of sales by the Petitioner of real estate in each of the years 1942 to 1948, with the exception of the year 1947 when the Petitioner did not file a return. The Petitioner contends that these sales, as I

understand their argument, are sales of rental properties and the gains therefrom are entitled to capital gains treatment under Section 117-J. The Respondent's position is that neither one of these come under Section 117-J, but were ordinary assets held for sale to customers in the ordinary course of business and that the gains, therefore—the money would be taxable as ordinary income.

Since the Respondent's computation is based on the net worth basis, if there is a determination by the Court of a gain on the sale of the assets and the determination that such gains should have been taxed, capital gain rates in income determined by the Respondent will necessarily have to be reduced due to applicaion of Section 117-J.

The Petitioner in the opening statement mentioned that the properties were sales of rental properties. That is partially true, perhaps. They were rental properties at one time, but that did not mean they were rental properties at the time of the sale. Also, he was buying land and subdividing it himself, building streets or cutting roads through the subdivision, and selling lots from the subdivision or building houses on the subdivision and selling those. With respect to the sales of real estate occurring in 1948, Petitioners contend that they were installment sales under Section [illegible] of the Internal Revenue Code of 1939.

The Respondent's position is that under the Statute, the regulations in the case, the Petitioner is not entitled to installment sales in 1948 because, among other reasons, the Petitioner did not make a proper election to use the installment method of reporting sales.

Other issues which have been raised relate to the computation of the net worth by the Respondent. In view of this I would like to present to the Court at this time for your information and assistance, and to follow through in the presentation of the Government's case, the computation of the net worth schedule and net worth statement of the Respondent plus all supporting schedules, sixteen in number. These are presented at this time for the purpose of assisting the Court in this proceeding as the case progresses and also to—not for the proof of anything in the statements, but to show exactly how the Commissioner's determination was made.

Mr. Cushman:

No objection.

Mr. Wolff:

If there is no objection, I will introduce as Exhibit A, with the same proviso that it is not introduced in the proof of anythng in the statement itself but as the method which was used by the Commissioner in determining this matter.

The Court:

It will be received and marked Respondent's Exhibit A.

(Respondent's Exhibit A marked for identification and received in evidence.)

Mr. Wolff:

Schedule 1 of these documents is the net worth statement itself. While the following sixteen schedules present figures in support of Schedule 1, these are

the same schedules which were presented to the Petitioner in July of 1954. With respect to Schedule 1, the first page which is the net worth statement itself, in the assets the Respondent has set forth various assets, the first being the cash in the banks.

At the time of the investigations the agents found checking accounts in the C & S National Bank and the Georgia Railroad National Bank & Trust Company in Georgia. The balances at the end of each year are on the right under Columns 1 to 9, inclusive. The years involved in this proceeding are 1941 to 1948. The figure appearing under Column 1 for the year 1940 represents our opening net worth statement which Petitioner has contested to some extent.

In line "c" relating to security deeds and notes regarding the following counties, the geography in Georgia is very close to South Carolina. As I understand it, Augusta is approximately twenty or twenty-five miles or maybe less from Akin, South Carolina. So in Akin County, South Carolina, there is property between Akin and Augusta. Most of the properties involved I believe will be found between Akin and Augusta.

Now the security deeds and notes recorded in the following county, Akin County, what was done in that case—and we notice that it is Schedule 2, supporting Schedule 2—we have taken the security deeds appearing on the county records. In that case if we turn to Schedule 2 we see the name of B. J. Sample, the security deed appearing at Book 67, page 124, dated July 29, 1937, in the amount of $1,250. That is the actual figure appearing on the security deed as being the amount of the security deed.

So the investigators in completing their investigation inquired at various sources, includng the Pet-

tioner himself and others—I have used this merely as an example; I don't know if they contacted Mr. Sample himself. But they found that in 1941 this particular security deed was still outstanding and the amount was on the beginning net worth statement at the end of 1940, and also in 1941. The security deed was marked "Satisfactory" in 1942 and therefore was taken off of the net worth schedule in 1942.

We go on down, I would like to take the last one on Schedule 2, Mr. Hangerson, for the first few columns there through $4,133. That is the amount appearing on the security deed. It was a loan made by the Petitioner to the Hangerson party. Now that deed was dated in 1947, so we go over in the amount of the security deed which was included in 1947, it having been made on December 31 of that year.

Now for the figure appearing in 1948, it was determined that the security deed was still outstanding. The examination was made from figures obtained in notes outstanding appearing on the security deed and the rate of interest. The computation was made as to what the value of that deed was as of December 31, 1948, assuming that regular payments were made during the year 1948. That is how the figure was arrived at in computing the $3,800.

Now the same thing is true with respect to all of this appearing on Schedule 1, "Security Deeds Recorded in the Following Counties." That would be supporting schedules 2, 3, 4, and 5. Now with respect to Schedule 6, "Other Loans Per Lewis Thurston Anderson"—Mr. Anderson each year, or approximately each year, commencing in about 1938, presented financial statements to various banks; the Citizens & Southern National, and the Georgia Railroad National Bank & Trust Company. He set forth what he called

his net worth at the end of each year or as of a certain day. It was generally the beginning of each year, January 1 of 1940, 1941, 1942, et cetera. Throughout all those years we have these statements which he prepared and gave to the bank as being his net worth for that time.

The Court:

May I interrupt. What type of income is it that the Government alleges that the taxpayer did not return? What business or what type of income was it, in general? I am a little confused.

Mr. Wolff:

Well in general, Your Honor, it was gains from the sale of the houses. He would sell a house and receive in return a security deed. Now he just didn't—in many instances he did not report the sales even. I do not know what his theory in not reporting the sales was; he just did not report them at all, did not report any sales or any income from the sales with respect to these security deeds. He was collecting interest on these security deeds. None of this interest was reported; some of it was and some was not reported. He was collecting interest at the rates of six, seven, and eight per cent on these deeds he had outstanding and just was not reporting. He was reporting some rental income, and that is about all that is shown in his returns.

Now evidently what would happen, he would take a piece of property and sell it. As you notice, we have only the security deeds included in here. For example a house would sell, the selling price would perhaps be $5,000 and he would receive $500 and have a security deed for $4,500. Well, this $500 down payment

has not been included in his net worth as being assumed. It would later show up in other assets. So the amount of the security deed only is included in the $4,500, is included as the asset.

He purchased property and split it up. He would buy one hundred acres or a couple hundred acres at a time. We allocated the cost as best we could in a consultation with the Petitioner himself. The agents got in the car with the Petitioner and rode around and inspected every piece of property that he owned and discussed with him how much this property was worth, cost of improvements, and attempted through some understanding to arrive at an allocation with respect to the cost of the property. The agents would also discuss these with the Petitioner and determine how much his cost was in these properties. Also in some of his returns wherein he reported costs and prepared depreciation schedules which were submitted with his cost, he would list the properties and the approximate cost that he had, the approximate cost of new houses.

The Court:

Is it true that aside from net worth you do intend to prove specific instances of failure to report items of income?

Mr. Wolff:

We have the sales, Your Honor, which are not reported on his return. We have these sales properties which were never reported on the returns. We also discussd it with the Petitioner as we feel there is some evidence of fraud. We have the Petitioner's statement that he did not have anything but these two checking accounts in the years involved. They

come around and later on found he also maintained a savings account in an Augusta, Georgia, bank—despite the fact that he had failed to notify or disclose this.

The main case of fraud is the underestimation of the income, substantial income, during the years involved. The Petitioner knew that he was making the money. He was reporting his net worth each year on the financial statements to the banks. Yet he was telling everybody and pointing out to the banks how much money he was making, telling everybody the amount of money he was making except the Government. He did fail to report it to the Government on the real estate holdings on the net worth schedule.

Mr. Cushman:

Excuse me. I reluctantly interrupt counsel at this time, but I would like for the record to show that we certainly object to this form of an opening statement. I respectfully submit for the Court's consideration and Mr. Wolff's consideration that this in effect is a summation which might be used before a jury. We think that he is lacerating the Petitioner, and we don't believe that is the purpose of the opening statement. We would like for the Court to understand that we do not acquiesce any rights.

Mr. Wolff:

We are fully aware that a jury is not present to impress in this matter. Any statement I have made was made with the feeling that it can be proved to this Court. If a man is guilty of fraud, Your Honor, fraud is to be determined by the Court; but at this point if we feel we have asserted it, we are going to

say he is guilty and we are going to attempt to prove it.

The Court:

I am aware of what he intends to prove. I think that statement is for the purpose of acquainting the Court with the nature of the case to be developed. We should not, of course, go to any greater lengths than that in the Court, even though there is no jury here.

Proceed, Mr. Wolff.

Mr. Wolff:

In the real estate holdings there were certain items which were included. I have told you how the cost was determined and allocated and also how these improvements were determined, and also we have included those in the net worth statement, "Construction in Progress." It is really more of an inventory of construction in progress which gives a better balance with respect to the items appearing in the net worth statement. In other words, on line "L" where we have "Richmond County, Houses in Subdivision Not Yet Completed and Not Included Above," where the income tax return now on those houses under construction had not been included in 1942, they would have appeared, say, in 1943 or 1944 when the houses were sold. That was done to place the income in the proper years that it could possibly be. In other words, the asset showed up actually in 1942 and we feel that it properly should be shown in that year, "Construction in Progress."

We also have included in there securities of stocks and bonds which the Petitioner purchased during the years involved. Also, he had some securities on hand

at the beginning of the period. That completes the total assets appearing on the net worth statement and deducted are the liability, notes payable, to the two banks and other various notes payable. I think mainly that is the line "Other Notes Payable." Appearing on Schedule 12 was mostly—maybe one of them was something that appeared on a financial statement. No, they were not on the financial statements; they were notes that appeared on security deeds that were outstanding that Petitioner gave security deeds on loans that he had made to the individuals.

Now also is included there the reserve for depreciation which is an issue in this hearing as to the amount of depreciation which has been allowed by the Respondent in this case. Now our depreciation is based mainly on conferences that were had with the Petitioner. He agreed with the amounts, and also the amounts that are shown on the income tax returns.

Now we have a problem in computing the reserve for the depreciation because we do not know the cost of the property and we have determined the cost of the property up above by allocation of the various costs through the best methods that were known to us. After computing the total assets and the liabilities, it was deducted to get what we call the net worth for he year. The increase in net worth was included and added to that with the personal withdrawals of the Petitioner; in other words, living expenses for the year. For each year from 1941 to 1944, we had living expenses for the Petitioner and his family of $2,000 a year. In 1945 and 1946 it was raised to $2,500, and from 1947 to 1948 it was raised to $3,000.

Respondent feels that that is a very conservative estimate of the Petitioner's living expenses during

that time mainly because—well, at least in several of these years he had a girl in college which cost some money. Certainly I think the evidence will bear out the fact that these estimates are conservative.

Now in the years involved the Petitioner had a sale of securities. In several years the Petitioner had sales which were capital gains and therefore were not deductd from his net worth in arriving at the net income because it was non-taxable income.

In the returns for the years 1941, 1942, and 1943—or in our computation for the years 1941 and 1942, we deducted in our computation the amount of contributions appearing on the Petitioner's returns for those contributions to church and charitable organizations. Commencing in 1944 the Petitioner was allowed a standard deduction as provided by law.

In the opening statement the Petitioner's counsel made the statement that there was some question raised with respect to the inclusion of these net worth statements and reducing them periodically at the end of each year. One of the only answers to that is that there was a contract between a willing buyer and a willing seller. The amount of the sale is certainly proof of the value of the property.

I think, Your Honor, that that gives a rather rapid summeration. I hope it has not been too lengthy or in too great a detail. I do think and hope that it will be helpful as we proceed in the case. It is our contention, of course, that the computation is accurate. However, it is realized that in some of these cases here where, for instance, we found that the deed was marked "Satisfactory" when these security deeds were marked satisfied on January 1, 1945, that possibly it was satisfied prior to that date. We accepted the date appearing on the deed itself. If proof comes

in that the deed was actually satisfied prior to that time and should not have been included, say, in the net worth at the end of 1944 instead of that, well certainly there is some evidences of that.

We could not go through every item and determine that the deeds were inaccurate, and we just took the amounts on the deeds. In view of that, it seems to me that it would be proper at this time to request that the pleadings—in the event of some discrepancies of that nature, pleadings should be made to conform with the proof. It would be a decrease in deficiencies. I believe that it is permitted under Section 272(e) of the Internal Revenue Code of 1939.

With respect to the proposition of who should proceed first in this case, the Commissioner has made a determination of deficiencies in income tax for each of the years 1941 through 1948. True, if the fraud is not shown for the years 1941, 1942, and 1943, there will be no deficiencies in that year. However, we have gone to the actual deficiencies and have found that really the big years commenced after 1944, where the burden of proof is on the Petitioner to show or to disprove the computations that have been made by the Respondent.

For example, for the first three years the deficiencies in income tax alone are approximately $10,000; but going down after 1943 the deficiencies amoont to about eighty some thousand or seventy-five thousand dollars. Certainly under those circumstances it would seem that the Petitioner should have the burden of proceeding to disprove the computations which have been made by the Respondent. In the pleadings, the Petitioner has alleged that there were certain assets which belonged to the other which were included in the net worth statement and included in the computa-

tions. Now the Respondent has determined assets belonging to the Petitioner, and that would seem to me to be part of his case—to prove they did not belong to the Petitioner.

The Court:

For purposes of the deficiency tax?

Mr. Wolff:

Yes, Your Honor. Section 112 does provide for the—I mean for the burden of proof being on the Respondent in the cases of fraud where fraud is determined, but that burden of proof only goes to the ground issue itself. It does not go to any issue of determining the deficiency in income tax. As far as the opening net worth is concerned, the Petitioner's counsel has stated that the opening net worth is the main basis of proceeding. The opening net worth at the beginning of each year is the thing in issue of this case, not only the net worth at the beginning of 1940. For example, our opening net worth at the beginning of 1943 is just as important to the prosecution of this case as the opening net worth at the beginning of 1940.

The Petitioner also stated that there were new facts alleged in the answer. I would have to disagree with that. I do not believe any new facts have ever been alleged that Petitioner was not previously aware of. Petitioner was furnished with the revenue agent's report on October 23, 1950. The statutory notice was issued in March of 1951. He was fully aware of the basis of proceeding in this case.

The Court:

But as a result you amended your answer, did you?

Mr. Wolff:

On the amended answer the only thing that was pleaded in the amendment to the answer, to the amended petition, was the application of Section 294 (d)(1)(A) and Section 294(d)(2). They are penalties provided or additions to the tax provided by Sections 294(d)(1)(A) and 294(d)(2). An underestimation of these was not claimed for all years at that time. For example, it was claimed for 1943, 1946, 1947, and 1948. One of the penalties was involved of either of those years. There was no claim for 1944 and 1945, or 1941 and 1942, when the penalties were not accurate.

That concludes my statement at this point, Your Honor.

The Court:

Do you have anything further, Mr. Cushman?

Mr. Cushman:

If it please the Court, we would respectfully ask the Court's indulgence for a very few minutes, without attempting in any way to intrude on the prerogatives of the Court. We do have a suggestion to make. Before making that suggestion, if Your Honor please, there are one or two things we would like to state as a basis for making this suggestion.

First of all, we would like to bring to the Court's attention that counsel for the Government has alleged to two occasions that this case was continued. We submit that when the case was first brought it was requested that a place of hearing be designated at Augusta, Georgia. I asked that that be done. The place of hearing designated was at Atlanta, Georgia. Subsequently, according to the rules and in exact and strict compliance with the rules, we asked that the

case be transferred to Columbia, South Carolina, which was closer to the home of the Petitioner. That motion was granted by the Court as a matter of course and in accordance with the rules. That is not a continuance in the formal sense of the word.

Further, when we were last in the Courtroom concerned with this case we had only had this schedule which Your Honor had, and I want to ask a question about that. We have had this schedule for some two months. It is our understanding that the agents went to work in the case in 1947 and finally got their findings together either in October of 1950 or in January of 1951. We submit that they have taken some three years to get the information together, and we were expected to digest it in a period of less than sixty days. We think as a matter of fairness the Court very properly should grant us a continuation of this case.

The Government has intimated that the continuation was based on the idea that a settlement could be reached. If Your Honor please, any lawyer who does not try to settle a case is not representing his client properly. I would like to point out to the Court that on at least four occasions Petitioner and his counsel went to Atlanta and had extended conferences with the representatives of the Government there. There have been numerous other conferences on this case.

Now counsel for the Government has gone to some length early in his remarks about the absence at this point of stipulation. We submit that the reason that there are no stipulations before the Court can best be described by using the words of counsel for the Government. Every time we made a proposal we

would be met with the answer, "That is partially true, perhaps." Up until a late hour last night we were being confronted with that same answer: "That is partially true, perhaps."

Now we would like to make this suggestion to the Court: that we have gone to great lengths to prepare scheduling here for the use of the Court and for use of counsel for the Government. We believe that if we sit down around a table with Your Honor there and take what the Government contends and take what we contend and look at them, that maybe we can arrive at an agreement concerning the bulk of this case.

There are certain figures concerning which there is no dispute. There are other figures which we think there can be no reasonable dispute. We would like to sit down around a table and have the Government come in with their objections, and the Petitioner and Mr. Anderson, if Your Honor would not object to that, and have all of us get around a table and see if we cannot work out these stipulations. We believe it can be done. We firmly believe that with an honest attempt to stipulate that a great deal can be accomplished, and we respectfully suggest this to the Court. If the Court wants to form a motion, we would make it in a form of a motion. We would like to go back to chambers and see what we can do about the ironing out of this case. Ninety-five percent of this case can be ironed out, and we would just like to do that.

One other thing if I may ask, if the Court will indulge. Mr. Wolff, is the schedule which you gave to the Court an exact copy of the revenue agent's report which you provided us?

Mr. Wolff:

Yes, with the exception of the opening schedule wherein I have—in the "A" column there I have a column going down and across the top numbered 1, 2, 3, 4, 5.

Mr. Cushman:

We think that is an exact copy. We would suggest that if Your Honor wishes, we would like to talk about this.

The Court:

I would like to ask Government counsel if he concurs in that suggestion.

Mr. Wolff:

Yes, I think that is a very good suggestion. Last night at the eleventh hour I had to get some sleep, I had other work to do. I had witnesses down here, opening statements to complete—I could not do it at the eleventh hour. I agree there is very much which can be agreed to.

The Court:

The Court is willing to do whatever it can to bring the parties together. So I think we should recess now and hold a conference in chambers and then convene at a time to be fixed later. We will recess at this point.

(Whereupon, at 11:07 o'clock a.m., a recess was taken.)

After Recess.

2:30 p.m.

The Court:
You may proceed in this case.

Mr. Wolff:
We are interrupting our stipulation conferences for the purpose of putting on several witnesses out of order so they might return to their respective homes. The first witness for the Government which I would like to call is Mr. John Murray from Augusta, Georgia.

Whereupon, JOHN B. MURRAY, was called as a witness on behalf of the Government and, having been first duly sworn, testified as follows:

The Clerk:
State your name and address.

The Witness:
John B. Murray; Augusta, Georgia.

Direct Examination.

By Mr. Wolff:
Q. Mr. Murray, are you acquainted with the Petitioner, Mr. L. T. Anderson?
A. Yes, sir.
Q. Are you here in response to a subpoena served upon you to produce records of your company with respect to rental income of the Petitioner during the years 1940 to 1948?

A. Yes, sir.

Q. Did you bring any records of your company with you?

A. Yes, the ones you have there, sir.

Q. What is the nature of your business, Mr. Murray?

A. Real estate.

Q. You are in the real estate business?

A. Real estate and insurance.

Q. Do you handle rentals?

A. Yes, sir.

Q. During the years 1940 to 1948, did you handle rentals for the Petitioner, L. T. Anderson?

A. Yes, sir.

Q. What years?

A. From 1944 to 1948.

Q. Commencing in 1944?

A. In 1944, February 1944.

Q. In the records that you have, you state the monthly totals of rentals collected for Mr. Anderson?

A. Yes, sir.

Q. And made to him?

A. Yes, sir.

Q. After deducting your fee?

A. Commission.

Q. Commission or fee?

A. That is right.

Q. Your records commence in February of 1944. I wonder if you would read off, tell us what your records have with respect to payments commencing in February of 1944 in each month through 1948.

A. February 1944, $79.80.

Mr. Cushman:

I think the record will speak for itself.

The Court:
The record does have it.

Mr. Wolff:
I would like to have the witness take his record back with him.

Mr. Cushman:
Let me look at the record then.

Mr. Wolff:
All right.

Your Honor, some question has been raised with respect to just putting the totals, monthly totals in. So it is at this time agreed by counsel that we would stipulate the document itself and the document will go in as evidence for the purpose of showing the amount of income received each month during the year stated by—

Mr. Cushman:
We did not stipulate anything.

Mr. Wolff:
Not stipulate—Do you stipulate these amounts were received by Mr. Anderson?

Mr. Cushman:
Mr. Wolff brought the witness here, and I assume the witness made himself or had made the records in the ordinary course of business. He is going to offer them in evidence. If those facts exist, I do not think any stipulation is necessary. And it does not matter much what we think.

Mr. Wolff:
It lays a foundation for the introduction of the documents.

The Court:
Mr. Cushman, I understood he was asking you whether you agreed that these rentals were received by the taxpyaer. You do not—

Mr. Cushman:
I just stated again, sir, I do not think five questions can qualify the document.

The Court:
Could you agree these records show certain things, Mr. Cushman?

Mr. Cushman:
I agree the records speak for themselves, sir.

The Court:
All right.

By Mr. Wolff:
Q. Were these amounts shown for each month from February 1944 through February 1948 for the amounts paid to Mr. Anderson?
A. That is correct, in net amount there.
Q. The net amount shown, which is under the column, is check two balances?
A. Expenses and commission, and checked the balance $69.82.
Q. In July of 1945 the amount of $69.82 is the amount that was mailed to Mr. Anderson?
A. That is right.

Q. And that is the same with respect to each month stated here?

A. That is correct. You will notice those were made for twelve months, a page and a half for each month. That is carried out for twelve months in the year.

Mr. Wolff:

Yes, sir.

I would like to offer at this time as Respondent's Exhibit B, Your Honor, the records of John B. Murray with respect—

The Witness:

John B. Murray Company.

Mr. Wolff:

—John B. Murray Company, Augusta, Georgia, being the records of that company with respect to rental income collected on behalf of Mr. L. T. Anderson commencing in February of 1944 and ending in 1948 and stating the amount of remittances to Mr. Anderson during the years stated.

The Court:

I believe you have no objection, Mr. Cushman, to their receipt in evidence.

Mr. Cushman:

No objection.

The Court:

It will be received.

(Respondent's Exhibit B was marked for identification and received in evidence.)

Mr. Wolff:
No further questions, Your Honor.

Cross Examination.

By Mr. Cushman:
Q. Mr. Murray, do you know anything about this real estate, what type of real estate it was?
A. No. I only passed it once or twice, looked at it. It is principally Negro property we were handling there, occupied by Negroes.
Q. I notice here on the first long page that the rentals vary from seven dollars a month to four dollars a month.
A. That is right.
Q. That was the individual piece of property; that was the rent they paid per month?
A. That is right.
Q. Do you know whether or not that is what you would call third rate property, first rate?
A. Not first rate.
Q. Third rate?
A. Ordinary, regular class of Negro property.
Q. Cheap property?
A. Yes.

Mr. Cushman:
No other questions, Your Honor.

Mr. Wolff:
I have next a representative from Clement A. Evans & Company in Augusta, Georgia. Mr. Williams.

Whereupon, JOSEPH H. WILLIAMS, was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

The Clerk:

State your name and address.

The Witness:

Joseph H. Williams; Atlanta, Georgia; Secretary-Treasurer of Clement A. Evans & Company, Inc.

Direct Examination.

By Mr. Wolff:

Q. Mr. Williams, are you here in response to a subpoena that was served on Clement A. Evans & Company to bring the records of Clement A. Evans & Company with respect to dealings in stocks and securities with Mr. Lewis Thurston Anderson in the years 1940 to 1948?

A. I am, sir.

Q. Do you have those records with you, sir?

A. Yes, sir.

Q. Do your records indicate the purchases of securities by Mr. Anderson during the years 1940 to 1948?

A. Yes, sir.

Q. When is the first sale, or when is the first purchase of securities indicated on your records?

Mr. McNatt:

I think the document again will speak for itself. I have no objection to his asking questions, but I do object to making the record so long.

The Court:
Do you have a shorter way, Mr. Wolff?

Mr. Wolff:
I offer Respondent's Exhibit C for identification.

(Respondent's Exhibit C marked for identification.)

By Mr. Wolff:
Q. I hand you Respondent's Exhibit C consisting of four documents, being four ledger sheets from the records of Clement A. Evans & Company. Are they the records of your company?
A. They are, sir.
Q. The first sheet with respect to $100 U. S. Treasury three and an eighth bonds, what is that?
A. That is a purchase by Clement A. Evans & Company from Mr. L. T. Anderson on December 30, 1944.
Q. Of the bond?
A. Of this particular bond.
Q. And that is shown as a credit?
A. That is a credit to Mr. Anderson's account.
Q. And this credit balance is then carried over to the following sheet?
A. That is right, sir.
Q. Then we come to purchases by him from you.
A. No, the next item on there is where we purchase from him $500 worh of bonds on February 21, 1945, which was paid for on February 24.
The next transaction on April 21, 1945, was a sale to Mr. Anderson of ten shares of common stock.
Q. On that you show the price as a debit where he purchases—
A. It is a debit. Where he sells it is a credit to his account.

Q. Yes, sir.

A. The next is April 21 when we sold to him Savannah-St. Augustine Gas Company—

Q. Do you pay Mr. Anderson interest on some of these bonds?

A. We paid accrued interest on the date of the last coupon until the date we paid him. That is a customary thing, that you pay accrued interest on bonds.

Mr. Wolff:

I would like to introduce as Exhibit C of the Respondent, being ledger sheets of the Clement A. Evans Company with the purchases of stocks.

Mr. Cushman:

We would like to look at them.

Mr. Wolff:

I am sorry.

Mr. Cushman:

It is a little bit out of order, but I would like to ask the witness a couple of questions about this, if I may.

The Court:

I see no reason why you should not ask the questions.

By Mr. Cushman:

Q. These are photostatic copies of some records of the company. Who made these records?

A. Well, the bookkeeper of Clement A. Evans & Company. I have the originals here if you care to see them.

Q. You say the bookkeeper of Clement A. Evans & Company made these records?

A. Yes.

Q. Do you have any knowledge of your own as to whether the entries here are true or false?

A. They were made under my supervision, and I am assuming they were true because checks have been received in payment therefor.

Q. In other words, you are making a statement under oath that these were made under your direction and that from your inspection or your perusal of the records you are satisfied that they are accurate?

A. Yes.

Q. Of course you do not know whose money was being used by Mr. Anderson?

A. No, sir.

Q. You do not know who was the owner of any purchase made here?

A. No, sir.

Q. And this simply reflects funds received by your company and dispersed by you?

A. That is right.

Q. And to the best of your own knowledge and recollection, these statements are true and accurate?

A. That is right.

Q. These are copies of your records?

A. That is right.

Mr. Wolff:

The originals are in the Courtroom for your inspection.

Mr. Cushman:

We have no objection to these documents being received on the basis that they are true and accurate

copies of Clement A. Evans & Company, as to the relevancy. We do not concede that—we concede they are accurate reproductions as he kept them.

Mr. Wolff:

If there is a question as to the accuracy of the records, Your Honor, I think it should be made at this time.

Mr. Cushman:

I do not know where you can make a witness being put on out of turn—we are not certain where the Government stands on anything at this tage of the game. I am sure my friends would not object to saving time, and later on if it is obvious that the records are inaccurate, immaterial, or irrelevant, I think the Court of its own volition will strike it.

The Court:

It will be received for the time being.

Mr. Wolff:

I withdraw my comments at this time.

The Court:

They will be received for the time being. If it later developes that they are not relevant, the motion can be renewed.

(Respondent's Exhibit C received.)

(Respondent's Exhibit C received in evidence.)

By Mr. Wolff:

Q. Mr. Williams, I hand you a document, invoices of the Clement Evans Company, consisting of seven sheets. Will you explain just what they are?

A. This first sheet on April 20, 1945, was where Clement A. Evans & Company sold to Mr. Lewis T. Anderson ten shares at $191, or a total of $1,190.

Q. Now, that was that you sold to Mr. L. T. Anderson?

A. Yes, sir.

Q. Would you take the last one and explain that one?

A. This is 1950. On December 9, 1948, Clement A. Evans & Company purchased from Lewis T. Anderson $500 worth of Riverside Mills, five and a half per cent first mortgage bonds, due 2-15-63 at $100 plus accrued interest from August 15, 1948, to December 9, 1949, in the amount of $8.70; making a total of $508.70.

Q. And you have testified with respect to the last document in that group of ten documents—I want to correct the record. I previously said eleven documents. It is ten documents.

These are invoices of stocks sold to Mr. Anderson and also stock purchased by Mr. Anderson?

A. Stocks or bonds purchased from him and sold to him.

Q. Purchased from him and sold to him.

The Court.

I would like to ask the witness a question. What is the business of your company?

The Witness:

Well, investment banker, dealers in security stocks and bonds.

The Court:

Not merely brokerage?

The Witness:

That is right. Principle underwriters or anything pertinent along that line.

Mr. Wolff:

I offer as Respondent's Exhibit D, ten invoices of the Clement A. Evans Company, being the record of purchases and sales during the years 1940 to 1948. I think the first sale is in 1943.

The Court:

Any objection?

Mr. Cushman:

We are perfectly willing to admit the records for the purpose that they are accurate reproductions of the records of this company.

The Court:

They will be received as Exhibit D.

Mr. Cushman:

Again reserving all rights as to accuracy, materiality, relevancy, and so on.

The Court:

Yes, sir. They will stand received unless you object at a later time.

Mr. Cushman:
All right. Good, sir.

(Respondent's Exhibit D was marked for identification and received in evidence.)

By Mr. Wolff:
Q. Mr. Williams, in buying stock from Mr. Anderson, it was bought and sold in his name, is that not right?
A. According to our records, yes, sir, it was.
Q. Are you acquainted with Mary Poole Anderon?
A. No, sir.
Q. Do you know a Mrs. Ozzie Faglie?
A. No, sir.
Q. In purchasing stock for Mr. Anderson or in selling stock to Mr. Anderson or purchasing stock from Mr. Anderson, those were always your dealings with Mr. L. T. Anderson, were they not?
A. As far as I know, they were. Those took place in Augusta, Georgia, with either Mr. Slaughtery or Mr. Dougherty. I am from the Atlanta office. So I presume—I don't know whether it is permissible or not.

Mr. Cushman:
Let the witness testify as to what he knows.

The Court:
We just want to know what you know.

The Witness:
In other words, Mr. Dougherty or Mr. Slaughtery had these transactions with Mr. Anderson according to the invoices in Atlanta.

By Mr. Wolff:

Q. You maintain the invoices in the Atlanta office?

A. Yes, sir.

Q. You billed Mr. L. T. Anderson?

A. They were billed in Augusta to him, and Augusta sent us our copy of that particular invoice.

Q. As a result of this, the next stocks were issued to Mr. L. T. Anderson, were they not?

A. That is right.

Q. I show you four canceled checks of the Clement A. Evans Company, Mr. Williams. Are they from your company, photostats?

A. Yes, sir, they are.

Q. You have those checks, the original checks with you, do you not?

A. Yes, sir.

Mr. Wolff:

I would like to introduce at this time Exhibit E, being four canceled checks of Mr. F. T. Clement and issued to Mr. L. T. Anderson.

Mr. Cushman:

Subject to the arrangements made by the Court.

The Court:

They will be received as Exhibit E.

(Respondent's Exhibit E was marked for identification and received in evidence.)

Mr. Wolff:

No further questions by the Respondent, Your Honor.

Cross Examination.

By Mr. Cushman:

Q. Actually, Mr. Williams, you know nothing about what took place at the time these stocks and these bonds were bought? You were not there.

A. That is correct. I was in the Augusta office.

Q. And you don't know for whom, if anyone, Mr. Anderson bought these stocks?

A. No.

Q. You don't know if he bought them for himself or for anyone else?

A. No, sir.

Q. You make no statements along that line?

A. No, sir.

Q. Let me ask you just one question here—well, I will get to that in a minute.

Now if you know, I should like to direct your attention to Respondent's Exhibit C, what is apparently page 2 thereof. On December 30, what does it indicate with reference to the purchase and sale?

A. It indicates that we purchased on December 30 from Mr. L. T. Anderson a $100 Treasury 165-4948 bond at 103-9/32.

Q. Do you have any records in there purchasing U. S. Treasury bonds?

A. No, sir.

Q. Nowhere in any of the exhibits which you have introduced here?

A. No, sir.

Q. Do you know, and I am asking you do you know of your own knowledge, whether or not the interest on Treasury bonds is tax exempt or not?

A. It is tax exempt.

Q. Wait a minute.

A. It is tax for Georgia, but not for Federal.

Q. There are a certain few which are tax free?

A. Yes. But they are all tax free as far as Georgia is concerned.

Q. Do you know what category they come into on these records?

A. Offhand, I would not know.

Mr. Wolff:

That is statutory. They are 1942 bonds.

The Witness:

It states they are due in 1946.

Mr. Cushman:

I just asked the witness if he knew, Your Honor.

The Witness:

I would not attempt to say without looking at—

By Mr. Cushman:

Q. Do you know with reference to state or local bonds?

A. In Carroll County, Georgia.

Q. Do you know whether interest is tax free or not?

A. It is tax free for both Georgia and Federal.

Q. Now I hand you these documents just by way of information, Mr. Williams. I hand you Respondent's Exhibit E, which consists of photostatic copies of four checks, both front and back, and ask you to direct your attention to two of those checks—I ask you to direct your attention to all four of these checks. On the backs of two of those checks is shown an indorsement by L. T. Anderson. The other two

checks are indorsed by two other people who apparently are—

A. That is credit to the account of Lewis T. Anderson; it looks like Thurston Anderson.

Q. Do you know Thurston Anderson?

A. No.

Q. You have no idea who he is?

A. Not the least.

Q. And there are two indorsements on the back?

A. Yes, sir.

Mr. Wolff:

I don't believe the witness has anything to do with the indorsements on the checks after they are issued to an individual. I do not see why it is relevant to bring that out. The exhibit is in the record and it speaks for itself. I do not think the witness is in any position to testify with respect to indorsements on the back of the check.

Mr. Cushman:

We are trying to determine, Your Honor, whether he is in a position to testify. If he does not know, he can say "I don't know," and that closes the inquiry.

The Court:

Proceed.

By Mr. Cushman:

Q. Now again directing your attention to the other check there, what is your knowledge with reference to the two indorsements which appear on the back there?

A. None whatsoever.

Q. Well actually then, you do not know whether the check went out to L. T. Anderson or to some other person; and by the same token, you do not know if Mr. L. T. Anderson did or did not receive the proceeds?

A. All I can say is that the check was honored, and that was indicated to us through regular banking channels.

Q. That is all you know?

A. Yes, sir.

Q. And you don't know Thurston Anderson?

A. No, sir.

Q. And Lewis Anderson?

A. No, sir.

Q. So it would be logical to assume that you do not know who got the money?

A. That is true.

Mr. Cushman:

Thank you, sir.

Mr. Wolff:

No further questions, Your Honor.

The Court:

You are excused, Mr. Williams. Thank you.

(Witness excused.)

Mr. Wolff:

Your Honor, I assume that as we finish these witnesses they are excused and will be able to return to their homes.

The Court:
Yes, sir, unless counsel for the Petitioner has some questions.

Mr. Wolff:
I just told them they could go home. If there is any question, I can still catch them and bring them back.

The Court:
I think it is perfectly all right for them to leave.

Mr. Wolff:
I would like to call Mr. Mason of the Johnson, Lane & Space Company, from Augusta, Georgia.

Whereupon, JAMES P. MASON was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

The Clerk:
State your name and address, please.

The Witness:
James P. Mason. Do you want my business address?

The Clerk:
Yes.

The Witness:
721 Broad Street, Augusta, Georgia.

Direct Examination.

By Mr. Wolff:

Q. Mr. Mason, are you appearing here in answer to a subpoena served on your company to produce the books and records of all dealings of L. T. Anderson during the years 1940 to 1948?

A. Yes, sir.

Q. You are with the Johnson, Lane & Space Company, Augusta, Georgia?

A. Yes, sir.

Q. What is the nature of your business?

A. Stocks and bonds.

Q. Are you acquainted with the Petitioner, Lewis Thurston Anderson?

A. Yes, sir.

Q. Did you bring with you the records in answer to the subpoena, the records of your company?

A. Yes, sir.

Q. In the records of your company is there maintained by Lewis Thurston Anderson or L. T. Anderson an account, Mr. Mason—does he maintain a regular brokerage account with your firm, or does your firm maintain an account under his name in your books?

A. Yes, we have an account with him. Not a special account, sir.

Q. Not a special account?

A. For instance, we have a miscellaneous account for Anderson and Ames and people like that in the A's who are not very active.

Q. For your inactive—

A. But they are in the "A" miscellaneous record of all the transactions with those people.

Q. Did you prepare a summary of the transactions that you had with Mr. Anderson and that are listed in the "A" miscellaneous account of your company?

A. Yes, sir.

Mr. Cushman:

May we ask a couple of questions, Your Honor, please?

Mr. Wolff:

A summary has been prepared, Your Honor, and I would prefer to introduce the summary to the "A" miscellaneous account.

The Court:

Rather than introduce the records, you mean?

Mr. Wolff:

Rather than introduce the records, Your Honor.

The Court:

Now as I understand, counsel for the Petitioner would like to ask questions before these are introduced.

Mr. Wolff:

Yes, sir.

Cross Examination.

By Mr. Cushman:

Q. Mr. Mason, what were the circumstances under which you prepared this summary?

A. It is a copy of our account or records with Mr. Anderson.

Q. Who prepared the summary, sir?

A. One of the ladies in our office.

Q. Did you check it?

A. Yes, sir.

Q. Now, what caused you to prepare this summary? You do not ordinarily prepare summaries for every account, do you, sir?

A. Well, we first prepared this hoping—we were not able to go through all our ledgers and take the original letters out, and I tried to get someone over in Columbia to see if we could do that. Since I already copied it, I brought it for any reference, or just a copy of the records there, and I brought it along.

Q. Who told you to prepare the summary, Mr. Mason?

A. No one.

Q. In other words, you had no conversation with anyone about preparing a summary of Mr. Anderson's transactions?

A. Not to my knowledge, no, sir.

Q. Did anyone in your organization have a conversation with someone about preparing a summary here?

A. No.

Q. Is your position, Mr. Mason, that you were subpoenaed to come to Court and bring the records, and you of your own volition and without any conversation or suggestion from anyone other than yourself, you prepared this summary?

A. The summary was made on my own volition as a convenience. Then I understood that the Court would want the actual records, and I brought the records along also with the summary.

Q. Well, now, from whom did you understand this?

A. Well, as a matter of fact, a Mr. Beeson who was with Clement A. Evans & Company—Mr. Williams just testified for Clement Evans & Company. Mr. Beeson said he understood from Mr. Calhoun, who is Assistant Solicitor or Solicitor over in Augusta, I believe, that the Court would not recognize any summary and that the actual records should be brought.

Q. And in spite of the fact that you knew the Court would not recognize a summary, you prepared one?

A. It was already prepared, and I saw no reason to destroy it.

Q. Is it not a fact that you have conferred with counsel for the Respondent and they told you to prepare this summary?

A. You said—I didn't hear that, sir.

Q. Is it not a fact that you conferred about this case with the attorneys for the Government and they told you to prepare this summary?

A. No, sir, I did not confer with the attorney for the Government.

Q. You mean to say that you are testifying here and you never had any conversations with any of these gentlemen here?

A. I thought you said—I understood you to say I had conferred.

The Court:

I just want to announce that the bailiff told me there was going to be a fire drill at this hour and he thought it would be perfectly all right for us to proceed, so long as none of us went into the hall.

Mr. Cushman:

Nothing dull about the practice of law, is there?

By Mr. Cushman:

Q. My question, Mr. Mason, was simply this: What conversation, if any, did you have with the attorneys for the Government with reference to the preparation of this summary?

Mr. Wolff:

Your Honor, I am going to have to object to this. I have never discussed the case with him. He has argued three or four times he did not talk about it with anyone.

The Court:

Let Mr. Mason say it again.

The Witness:

The Court was recessed at around eleven thirty. I had my records and asked Mr. Wolff if they got to me in this session would it mean I could go back to Augusta, Georgia, and not stay in Columbia. He said, "Have you got your records?" and I said "Yes." He asked me for the records and asked me to leave them with him.

By Mr. Cushman:

Q. The real point at issue here, as I notice you have down here certain stock transactions entered into or engaged in by one Ozzie Faglie. You have stated this summary was prepared as a result of an examination made under your direction of the "A" miscellaneous account. Obviously, the name Faglie begins with an "F." We would like you to explain

what the transactions regarding Faglie are doing in your summary, which by your own testimony was confined to the "A" miscellaneous account.

A. By reason of the fact that the security was really a purchase for the account of Mr. Anderson. The bookkeeper recorded it as a purchase for the account of Mrs. Faglie.

Q. Well, let us go in there and see what she is talking about in the original account.

You prepared a summary, of which you have a copy, down to 1-10-44. You have there an entry of the account of Ozzie Faglie. What do your records show with reference to that?

A. This record shows that the bond in question was purchased by Mr. Anderson on the date January 10, 1944. The invoice was apparently made up that way, and it was charged to Mr. Anderson's account and paid for. Apparently the charges were instructed by someone to register the bonds in Miss Ozzie Faglie's name, which it was, and delivered a copy. It was actually under the name Miss Faglie.

Q. All right, sir. Now is that true of all the other entries regarding Mrs. Faglie on it?

A. I don't believe there are any more in here, as well as I remember, for Mrs. Faglie.

Q. How about 3-26-45, sir?

A. March 26, 1945. On March 26, 1945, there was thirty-two shares of—Do you want me to read this?

Q. Yes.

A. Thirty-two shares of Boston Edison stock purchased at forty dollars a share. Our cashier was instructed to—whoever took the order at that time was instructed to have twelve shares registered in the name of Ozzie Faglie. I beg your pardon, that was another one. And twenty shares registered in the name of Lewis T. Anderson.

Q. Now just for the sake of the record, if you will go back to 12-2-43, I notice you have a "/c Mary Poole, 12-2-43."

A. What was that date, sir?

Q. 12-2-43.

A. On that date five shares of Georgia Railroad Bank & Trust Company stock was purchased for Mr. L. T. Anderson for the account of "Mary" at $136 a share.

Q. Account of Mary who, sir?

A. Assumed to be Mary Poole Anderson. The bookkeeper just put down the name Mary.

Q. And I assume the next entry on 12-3-43 is credited to Mary Poole. Do you have that there? What is represented by that entry on this summary?

A. It looks like a credit of $122.50. The bookkeeper has ditto at "L. T. Anderson" but does not say "For the Account of Mary."

Q. In other words, in order to expedite as much as possible, on 12-3-43 is something here which is apparently "collection"—or "c-o-l-l, period"—"$100 Treasury Bond and coupons." What does that entry on this summary represent out of your books?

A. It represents a collection of $100 Treasury Bond. It looks like "L. T. Anderson, credit $122.40."

Q. Another ditto there?

A. Yes, sir.

Q. And I assume there is a ditto for Mary.

A. There is no ditto under Mary. The credits there were apparently applied against that purchase.

Q. In other words, your position with reference to this summary which you have before you, where the words "Mary Poole" and all those ditto marks come underneath it, is actually transactions for the ad-

vantage or credits made to the account of Mary Poole Anderson?

A. Yes, sir.

Mr. Wolff:

You were dealing with Mr. L. T. Anderson at the time, were you not?

The Witness:

Yes, sir.

By Mr. Cushman:

Q. Well, there must have been some reason for you to put "Mary" down there, was there not?

A. While I don't have the copy of the invoice, 1943, I assume that the invoice was made "Sold to Mr. L. T. Anderson for the account of Mary"—Mary Poole Anderson.

Q. Do you know Mrs. Mary Poole Anderson?

A. I don't know her, but I think she has been in the office. She has been in there, I think.

Q. In other words, you are satisfied though from your own records and your summary that these transactions indicated here as being "Mary Poole" are in effect transactions for the benefit of Mary Poole Anderson?

Mr. Wolff:

Objection. I don't think that is the proper question. Probably there is no doubt in her name, but I don't want to put words in the witness's mouth as far as the benefit is concerned.

Mr. Cushman:

If Your Honor please, we have been confronted with a summary, and it just is not fair that the Court does not have the particular document.

(A document was handed to the Court.)

Mr. Cushman:

If Your Honor will look at about the middle of the first page there, you will see a series of ditto marks and a slash Mary that was made by the Government's witness. We think we have a right to determine the circumstances under which those signs were made and why they were made and what the summary is designed to reflect.

The same thing is true of Ozzie Faglie. If Your Honor please, on the sheet which you have there is a pencil notation which does not appear on this one, where it says "Mary Poole." I would like to know what that is, too, sir. In other words, it may be this testimony is helpful to us, but we should not have any dispute as to what the document means when it comes in.

Mr. Wolff:

I have no objection as to what the documents mean, but when he tries to tell the witness what his own books mean that is what I was objecting to.

The Court:

Continue on with your questions.

Mr. Cushman:

All right, sir.

By Mr. Cushman:

Q. Just what do your books mean, sir, with reference to these entries where "Mary" appears on the back of these credits and debits which were made there? What is your understanding of your own records?

A. They were made for her account, ownership for her.

Q. All right.

Mr. Wolff:

That is all you know about it, isn't it, Mr. Mason? That they were bought for her or in her name at the request of Mr. Anderson. That is all your books show?

The Witness:

Yes, sir.

Mr. Spillane:

Mr. Cushman has the right on cross examination—

Mr. Wolff:

I am not through with my direct examination. You are examining with respect to this document.

Mr. Spillane:

How about waiting until Mr. Cushman gets through.

Mr. Cushman:

Just asking the truth, so we will do the best we can.

By Mr. Cushman:

Q. Now, Mr. Mason, there is on the copy of these things which the Judge has, or did have, a pencil

notation down here which apparently reads "Registered, Mary Poole" with reference to a transaction occurring on 4-16-45. Did you make that pencil notation?

A. Yes, it is my writing.

Q. Should that pencil notation be on the summary or copies of the summary?

A. It was made for my information after checking back through this seventeen shares of Georgia Railroad and Banking was purchased by Mr. Anderson and registered in the name of Mary Poole Anderson.

Q. Where does that appear?

A. That appeared on a delivery ticket. These are copies of our invoices but they are not complete. They are delivery tickets. We make several copies. There is a copy of that invoice made on April 16, "Sold to Mr. Anderson, one hundred fifty-three and a half." When the security was paid for, apparently the cashier had instructions to register the name of Mrs. Mary Poole Anderson. That was done and a certificate delivered.

Q. In order for your summary to be correct it should appear down there then that that Georgia Railroad item should be registered in the name of Mary Poole just like all the rest of them, is that correct?

A. I presume so. That is why I put it there.

Mr. Wolff:

See if there are two transactions on that date with respect to the seventeen shares.

The Witness:

No, sir. Five shares on April 20. According to my delivery tickets, that was transferred to Mr. Anderson's name.

Mr. Cushman:

You would not have any objection to Mr. Mason putting on this document in ink "Registered in Mary Poole Anderson's name," would you?

Mr. Wolff:

No.

(At this point the witness marked the document.)

By Mr. Cushman:

Q. Was there one lot of Georgia Railroad and Banking stock involved there or two lots?

A. According to this ticket No. 428 which was delivered to Mr. Anderson in April 1945, it must have been one lot.

Mr. Wolff:

Do you have a certificate No. 429 right there at the same time?

Mr. Cushman:

Your Honor, if the Court please, we are trying to explore this situation. I can certainly understand Mr. Wolff's desire to get the facts before the Court and I don't want to interfere in any way, but sometimes when you are trying to get a question and a fire drill goes on in the hall and counsel interposes a question, it is kind of hard.

The Court:

I think so, Mr. Wolff.

By Mr. Cushman:

Q. In other words then, Mr. Mason, from examination of your records here on the witness stand and in answer to questions which I propounded to you, it is your judgment based on your inspection of your records that it was only one lot of seventeen shares of Georgia Railroad and Banking stock? Is that correct, sir?

A. On that date?

Q. Yes.

A. That is correct, as of April 16, 1945.

Q. All right, sir. Do your records indicate a transaction for Ozzie Faglie on 3-26-45, please, sir?

A. Ozzie Faglie's name appears on twelve shares of Boston Edison for purchase for her account.

Q. Purchased by Mr. Anderson?

A. Apparently so, sir. I could not say who gave the order, but it was purchased.

Q. Would you read aloud, please, sir, the exact entry which you have in your books?

A. On March 26, 1945, thirty-two shares of Boston Edison stock was purchased. The bookkeeper has put "12 in-0, Ozzie A. Faglie" and "20 in-0, L. T."

The Court:

What does that mean?

The Witness:

And it is a ditto beneath an item on the 26th, "Cash credit to Lewis T. Anderson's account for $500." I would interpret that the thirty-two shares of Boston Edison were purchased for the account of Mr. Lewis T. Anderson but twelve shares were to be registered in the name of Ozzie A. Faglie and twenty shares in the name of Lewis T. Anderson.

Excuse me, sir. "In-0" is in the order they were purchased.

By Mr. Cushman:

Q. In other words, from your interpretation of your records, as a result of that Ozzie Faglie owned twelve shares and Mr. Anderson owned twenty?

A. Yes, sir.

The Court:

That answers my question, too.

By Mr. Cushman:

Q. Now if you will direct your attention, please, sir, to page 2 of your summary which you have there before you, down around about a third of the way down, "6-3-46, transfer Ac. L. T. to 6."

A. What date?

Q. June 6, 1946, sir.

A. Yes, I see it.

Q. All right. Now what does that mean exactly, sir?

A. We apparently had a credit. The bookkeeper had a credit for the account of Mr. Lewis T. Anderson for $419.85—or Lewis T.—coming out of some transactions which she would have to go back and look in to find out where it came from. It was credit brought over on May 1946.

Q. On your summary you say "the 6-3-46 transfer from account of L. T. to"—and apparently two ditto marks. I am not clear as to what transaction.

A. I am not, either. I didn't handle the bookkeeping, but the way I would interpret it is this: L. T. Anderson transferred from the account L. T. Anderson to the account Mary Poole. So Mr. Anderson's account was debited to '49 to clear out the credit.

Consequently on June 3, transfer to account Mrs. Mary Poole Anderson from account of L. T. Anderson, her account was credited.

Q. That represents the transfer of ownership from Mary Poole Anderson?

A. According to these records, it is.

Q. All right. Now if you will, please, direct your attention to the invoice as of 6-6-46. "L. T. Anderson /see Mary Poole, $372.60."

A. Yes, sir.

Q. What transaction in your books is represented by that entry here on the summary?

A. Would you repeat that question?

Q. What transaction in your books is represented by that entry which I have just read to you appearing on the summary?

A. It was a check, according to my books, given to Mr. Anderson for the account of Mary Poole Anderson.

Q. In other words, from the interpretation of your own records you would say Mr. Anderson received in trust the sum of $372.60 for Mrs. Mary Poole Anderson?

Mr. Wolff:

Let us not say "in trust."

The Witness:

I would say he received the money for her.

By Mr. Cushman:

Q. All right. Now directing your attention, please, sir, to the last entry on page 2, 11-3-48, these words appear on your summary: "Credit check of L. T. for/see Mary Poole A., 381.50." What transaction in

your records is reflected by that entry on your summary? In order to save questions, would you please tell the Court what is meant by that?

A. November 3, 1948. According to this, a check was given to us by Mr. L. T. Anderson to be applied to the credit for the account of Mary P. Anderson. There was credited thereby to that account the $318.50.

Q. In other words, your interpretation of your records is that you received money from Mr. Anderson for the benefit of one Mary Poole Anderson?

A. The records would indicate that.

The Court:

May I ask the witness a question. You speak of the account of Mary Poole Anderson, and I believe once or twice you spoke of the account of this third party. Did you actually have accounts for those people on your records?

The Witness:

I believe the transactions, sir, would—

The Court:

Did they run accounts with your company?

The Witness:

I don't believe we have any accounts with Mary Poole Anderson or Ozzie Faglie. I cannot swear to that.

The Court:

What would it mean otherwise?

The Witness:

It would mean that Mrs. Anderson or Mrs. Faglie came into the office and personally attended to the business personally, gave the order and paid for the stocks. If Mary Poole Anderson had personally come into the office, we would have, I believe, opened an account or there would have been a transaction in her name without Mr. Anderson's name attached to it "For the account of."

The Court:

But in those instances where you say that something was paid to the account of Mary Poole, do you mean you simply passed a check to her or did she have an account to which you credited that?

The Witness:

Well, I could not rightfully say so, Judge, without seeing the check. But I will assume from this record that a check was—if we received a check, like the bookkeepers got it credited here that it was Mr. L. T. Anderson's check. Now that I could not swear to without seeing that check. I don't know how the bookkeeper handled that. I don't remember the check, don't remember the transaction.

The Court:

Will you proceed, Mr. Cushman. I did not quite understand what he meant by "To the account of." I am still not sure.

By Mr. Cushman:

Q. Let us examine this a little bit. Would this be a fair statement: that it simply indicates that it was Mr. Anderson's practice to buy and to sell securities

of various and sundry kinds for the benefit of his mother and his sister?

A. I would say for their accounts, which interpreted means it was their money. He was handling their business.

Q. In other words, he was using their money and getting stock for them?

A. That is what I would assume.

Q. And you would also assume, would you not, that if these ladies had come in and made the transactions themselves there would have been a separate account with their name at the top?

A. It should have been done that way. It is customary for the company to do that.

Q. Would it be a fair statement to say that Mr. Anderson was in fact dealing with matter belonging to his mother and sister?

Mr. Wolff:

Objection, Your Honor. That is not a proper question. He does not know that. He can ask him if he knows whether or not Mr. Anderson was dealing with their money, and if he does not know that is the end of it.

The Court:

The objection should be sustained, Mr. Cushman.

By Mr. Cushman:

Q. Now Mr. Mason, I would like to ask you this question: There has been at least one ink correction on the front of this paper. Are you prepared to state, sir, that there should not be more ink corrections on it?

A. No, I am not, sir.

Q. In other words, you are not prepared to state as to the complete accuracy of this summary?

A. No, sir.

Mr. Wolff:

In view of that, Your Honor, I suggest that we introduce the records themselves plus the summary to go along with the cross examination which has just been brought out.

The Court:

You were examining the witness to determine if you could agree to this summary going into evidence.

Mr. Cushman:

I have one more question which I would like to ask.

By Mr. Cushman:

Q. Do you know whether or not Mr. Anderson handled his mother's and sister's money and made investments for them with your company?

A. He made investments for them. Now as to whether it was his check or their checks which were received in payment of a security they might have purchased, I am not qualified to answer that.

Q. Well actually, the records maintained by you indicate that he did.

A. Handle their business in the normal course of business

Q. That is it.

Mr. Cushman:

We would like to have the records in and the summary in for the purpose of indicating to the Court the direction of the cross examination. I don't think we have any choice to do otherwise.

The Court:

Do you move the admission of these papers?

Mr. Wolff:

Yes, Your Honor, I am going to offer them.

Mr. Cushman:

We would particularly like to limit this to the statement made by the witness on the stand that it does not appear on all the copies.

Mr. Wolff:

The original is the one that goes into the record, is it not?

Mr. Cushman:

That should be the original, the one the witness made his notation on.

By Mr. Wolff:

Q. In placing on your records, Mr. Mason, the names to the account of Mary Poole Anderson, did I understand you to say in each instance you were dealing with Mr. L. T. Anderson for their account?

A. That is my understanding. Of course, Mr. Anderson would have done business with someone else, but it is my understanding that the business which I handled personally with Mr. Anderson, that I was dealing for their account.

Q. If these were dealings personally by the individual for Mrs. Anderson or Ozzie Faglie, did I understand you to say that they would have opened an account for them?

A. Yes, sir, I believe an account would have been opened by my firm for them if they came in and paid for it with their check personally.

Q. Some discussion was had, Mr. Mason, with respect to the transaction occurring April 16, 1945.

A. Yes, sir.

Q. Would you explain what that entry is? You mentioned certificate No. 40128. Explain the entry first and then we will go on to the certificate.

A. According to these records, it looks like on April 16, 1945, that Mr. Anderson purchased seventeen shares of Georgia Railroad at $153.50 a share, a debit of $2,609.50.

Q. Now does it also show on the same date another transaction with respect to nineteen shares of Georgia Railroad Bank & Trust Company stock?

A. There is a purchase on April 19, 1945, of fourteen shares of Georgia Railroad Bank & Trust Company stock. The bookkeeper has the account R. E. Adams at one hundred fifty-three and a half, a debit of $2,149.

Q. Nothing to do with L. T. Anderson?

A. According to these records, a check was received from Mr. Adams.

Q. Now wait. You say Adams now. We are talking about Anderson.

A. There is a mention on here of fourteen shares of stock purchased by a Mr. R. E. Adams whom I don't know.

Q. Now let us keep it with Mr. L. T. Anderson. Do you have there on April 23 a transaction of nineteen shares of Georgia Railroad Bank & Trust Company stock?

A. Let's see now. This is not a transaction. It was a certificate of Georgia Railroad Bank & Trust Company of nineteen shares that was issued apparently to Mr. Lewis T. Anderson and delivered to him.

Q. Nineteen shares delivered to him on what date?

A. April 30, 1945.

Q. And invoice number?

A. Invoice number?

Q. Yes, sir.

A. Certificate number. The stock certificate was 40021.9

Q. Now would you read stock certificate 40128? Do you have that for seventeen shares?

A. Well, that was for Mrs. Mary Poole Anderson.

Q. That is the one that appears on this summary here "for the account of"—where you made the ink notation?

A. Seventeen shares.

Q. For seventeen shares. That was registered in the name of Mary Poole Anderson.

Now how about 40129 for nineteen shares? Does that appear on this summary you have here?

A. No, sir, I don't see it.

Q. It should be on there, should it not?

A. Well that was a delivery now of nineteen shares of stock. It was made to Mr. Anderson.

Q. Delivered on April 30?

A. Certificate delivered, I believe the date I said was April 30 of nineteen shares. That is right, April 30. This does not represent a sale, it represents a ticket which the cashier made out. There are no figures on it as to a purchase in order to get him to sign that he received the certificate of stock.

Q. Well, now, you have no way of knowing under what circumstances you issued this certificate, is that right?

A. The nineteen shares?

Q. Yes, sir.

A. The only thing that this indicated by these records was that this seventeen—wait now. The four-

teen shares of Georgia Railroad apparently was purchased by a Mr. R. E. Adams. This is where I will assume, according to a notation on here "and five shares which he purchased from Mr. Anderson for the L. T. Anderson account on April 20." That is the only nineteen shares I see; that fourteen and five. According to this delivery ticket, the nineteen shares was delivered to Mr. Anderson and registered in his name.

Mr. Wolff:

That is, the fourteen shares purchased by R. E. Adams and five shares purchased by Mr. Anderson were issued as nineteen shares. The certificate for nineteen shares was issued to Mr. Anderson?

The Witness:

Yes, sir.

Mr. Cushman:

I don't think the record shows all that, if Your Honor please. Why don't we put the delivery ticket in and see what it says?

The Court:

I think it should go in, but perhaps this witness is better qualified than most of us to interpret his own records.

Mr. Cushman:

All right. That is perfectly all right.

The Court:

I want to be sure we have his considered answer.

Mr. Wolff:

No further questions, Your Honor.

By Mr. Cushman:

Q. Would you explain to the Court what that blue card is with the name Lewis Thurston Anderson on it?

A. It is what we call a holding card. Sales or purchases are posted on this card and maintained as permanent information on the file in our office. It is kept for our records, it is kept for the individual in case he wants to know a security he purchased in 1931 for tax purposes, and it is kept for many reasons. Each transaction that we have with the Petitioner is supposed to be posted on these holding cards. I cannot vouch for the accuracy.

Q. That is your record, the record of your company with respect to the transactions that you have. Taking into account the frailties of human error in the posting, that is what your records state?

A. Yes, sir.

Q. And it is assumed to be true?

A. Yes, sir.

By Mr. Wolff:

Q. On that blue card do you have on there, for example, the certificate No. 4091?

A. No, sir, they would not be kept on this card.

Q. All sales and purchases are supposedly appearing on there, is that what I understood you to say?

A. They are supposed to be, yes, sir.

Q. Is the sales price on that card?

A. Yes, sir.

Mr. Wolff:

I would like to introduce into evidence at this time Respondent's Exhibit F, the miscellaneous ledger sheets of the Johnson, Lane & Space Company for the years 1940 through 1948. Also, as part of the same exhibit, I would like to introduce the summary that was prepared for whatever purposes it might serve the Court with respect to an explanation of the records and the explanation that Mr. Mason has given to the Court with respect to the entries appearing on the summary sheet.

The Court:

Any objection?

Mr. Cushman:

I don't think there is any objection.

Mr. McNatt:

I would like to point out that this is not Mr. Anderson's ledger sheets in the sense that his name appears at the top. This is the miscellaneous account and there will be numerous people listed on this sheet that have nothing to do with Mr. Anderson. The testimony a minute ago might have indicated that Mr. Anderson was buying stock in the name of Mr. Adams. I don't think the Government contends that. There is a Mr. Adams on the "A" sheet.

The Court:

It will be received in evidence.

(Respondent's Exhibit F was marked for identification and received in evidence.)

Mr. Wolff:

I would also like to introduce as Respondent's Exhibit G the blue ledger card on Lewis T. Anderson.

Did you call this a ledger card?

The Witness:

A holding card.

Mr. Wolff:

The holding card that has been previously discussed having the sales and purchases in the account of Lewis T. Anderson for the years involved, commencing all the way back.

Mr. Cushman:

If it please the Court, I do not know what we can do with the card. It only goes up to 8-27-43 and all the way through 1948. There were a great many other transactions which occurred after August 27, 1943. This record is incomplete. This is one of those things, perhaps, which should be determined outside of the Courtroom. We have no objection to the card going in as representing the records of the company for the years specified thereon, but we would like for it to be clearly understood that that does not out a limit on it.

The Court:

That would be so understood, would it not, Mr. Wolff?

Mr. Wolff:

Yes, sir.

By Mr. Wolff:

Q. Do you generally, Mr. Mason, have two cards or something?

A. It depends on how much business an individual does with us.

Q. For example, after August 27, 1943—

A. There is another card.

Q. Is that here?

A. No, sir.

Mr. Wolff:

Respondent's Exhibit G is still offered, Your Honor, at least for the purpose of those transactions involved in this prosecution.

The Witness:

The other card would show the transactions which are in that ledger to some degree of accuracy, but there are some transactions on there that would not be shown in the records because they go back to 1930 or 1931.

By Mr. Wolff:

Q. Your ledger cards commenced in 1943?

A. That is right.

Q. And these are 1943 and prior to 1943?

A. Yes, sir.

The Court:

It will be received in evidence as Exhibit G.

(Respondent's Exhibit G was marked for identification and received in evidence.)

Mr. Wolff:
I would like to offer as Respondent's Exhibit H the two certificate sheets—what are these called?

The Witness:
Delivery tickets.

Mr. Wolff:
Two delivery tickets from Johnson, Lane & Space, the first dated April 16, 1945, and the second dated April 27, 1945.

Mr. Cushman:
If it please the Court, we intend to go into this more fully later on, so we have no objection to getting all of it before the Court.

The Court:
They will be received as Exhibit H.

(Respondent's Exhibit H was marked for identification and received in evidence.)

Mr. Wolff:
I have no further questions to ask of the witness.

Mr. Cushman:
We have one or two more questions on cross examination, if the Court please.

By Mr. Cushman:
Q. Mr. Mason, I hand you Exhibit G, so-called holding card of Mr. Anderson, and ask you if you would please direct your attention to the entry appearing as of 10-19-36. I will ask you to read that

entry aloud and tell us what you mean by the entry appearing on that card.

A. The entry is dated October 19, 1936. "Purchased at $1,000"—

Mr. Wolff:

Objection, Your Honor. I explained that we were not going into the prior years. There are some years before the Court, 1941, 1942, and 1943, which appear on that card. I do not believe any question has been raised with respect to the earlier years.

The Court:

That is correct. What is the relevancy of that to the years in question?

Mr. Cushman:

We have contended throughout the case that Petitioner transacted business for his mother and sister. We think there is an entry on that card which shows that he did that as far back as 1936, a long time before any income tax dispute ever came up. We think that where the fraud issue has been raised in a case that the proper rule would be to allow any testimony to come in which would be of value to the Court in determining the truth of the Petitioner's position. We want to point out to the Court through questioning that back in 1936 this company's records show that Mr. Anderson was transacting business for his mother.

The Court:

What do you say, Mr. Wolff?

Mr. Wolff:

I certainly think he is entitled to show that. I do not know that that blue sheet will show it.

The Court:

Whatever it may be worth, I think we can accept it in evidence.

By Mr. Cushman:

Q. Please answer the question.

A. On October 19, 1936, the card indicates that a $1,000 bond of Florence, South Caroline, for four and three-quarters in '62 was purchased at a price of 107.75 for the account of Mrs. Mary. I would assume it was an account of Mrs. Mary Poole Anderson.

Q. And Mrs. Mary, that is the same type of entry which appears on all these ledger sheets over there?

A. Yes, sir.

Q. I hand you Exhibit H consisting of two delivery tickets, and Exhibit F consisting of the summary and ledger sheets. Now please direct your attention to those delivery tickets there. Look at the one on the bottom, the one not numbered. Will you state exactly what is indicated by this delivery ticket dated April 27, 1945?

A. It is indicated that nineteen shares of Georgia Railroad represented by certificate 400219, registered in the name of Lewis T. Anderson, was delivered to Mr. Lewis T. Anderson on April 30, 1945.

Q. Where does it indicate that that particular certificate was registered in the name of L. T. Anderson?

A. It had been registered in a person other than the person's name who received the cash. There should have been a notation put on it.

Q. All right, sir. Actually, what appears on it is that Mr. Anderson signed for the receipt of a certain certificate number?

A. Yes, sir.

Q. But there is nothing on there as to who owns it?

A. No, sir.

Q. Look at the one on top of that, sir, April 16, 1945. What is indicated on that?

A. This is an actual copy of an invoice which bears the figures of price which was paid. That is April 16, 1945; both seventeen shares of stock at $153.50 and a cost of $6.50. While it was purchased in his name, apparently the bookkeeper was instructed afterwards to put in the name of Mrs. Mary.

Q. All right. Then the first certificate shows Mr. Anderson having the first ticket, as having received a certificate numbered 40128, and also shows ownership to be Mrs. Mary Poole Anderson?

A. That is right.

Q. All right, sir. I ask you, if you would, sir, to refer to your records which you have there before you, the ledger sheets for the time 4-23-45.

A. Yes.

Q. Have you located them?

A. Yes.

Q. As of that date, what purchases for sales or other transactions are indicated on your records as having been engaged in or participated in by Mr. Anderson?

A. On 4-23-45?

Q. Yes.

Mr. Cushman:

While you are looking that up, sir, with the Court's indulgence I would like to ask the Court to direct its attention to revenue agent's report, Schedule 11, reporting to the—

The Court:

That large exhibit that I had before?

Mr. Cushman:

That is correct. It is alleged therein, if Your Honor please, that on 4-23-45 he had seventeen shares purchased there and two shares purchased there (indicating) and on the same date seventeen other shares purchased. That is the particular point in the revenue agent's report on which we are trying to throw light on this line of questioning.

The Court:

That is on Schedule 11 of Exhibit A.

By Mr. Cushman:

Q. Have you located the transaction?

A. On April 23, 1945, there was a check given us for the account of Mr. L. T. Anderson credited to his acount for $2,859.15.

Q. Then actually your records do not show that Mr. Anderson acquired any stock as of April 23, 1945?

A. I see no entry on April 23 whereby he acquired any stock from us.

Q. In order to tie it down into the record, for your information, Mr. Mason, on Schedule 11 of Exhibit A, which is the revenue agent's report, there appears certain purchases of stock by the Petitioner, all of which are alleged by the Commissioner to have taken

place on 4-23-45; specifically, seventeen shares of Georgia Railroad Bank & Trust Company on 4-23-45, two shares of Georgia Railroad Bank & Trust Company on 4-23-45, and seventeen shares of Georgia Railroad Bank & Trust Company on 4-23-45. Both purchases of seventeen shares of one hundred fifty-three and a half in the amount of $2,609.50, both lots of seventeen shares, and the lot of two shares in the amount of $307, I will ask you to refer to your records and inform the Court as to whether or not any such purchases are reflected therein as of 4-23-45.

Mr. Wolff:

Your Honor, we have stipulated. We have the issue dated. The certificate is 4-23-45. I believe that is what it is. Now I do not see what Mr. Mason's records show as to when the money went in to him, I do not think that is particularly material in the case. If there is some slight discrepancy, we will stipulate.

Mr. Cushman:

I believe I can clear it if you just give me a minute.

The Court:

Proceed.

By Mr. Cushman:

Q. Answer my question.

A. I see no purchase of stocks or bonds or any securities on the date of April 23, 1945, by Mr. Anderson or for the account of anyone else.

Q. All right. Now directing your attention to that portion of your record, will you state the nearest date either before or after April 23 when purchases of stock

or the purchases of securities occurred? I would like to correct that statement. Where purchases of Georgia Railroad Bank stock occurred, the nearest date either before or after 4-23-45.

A. The nearest one I see is a purchase of five shares on the date of April 20, 1945.

Q. All right, sir.

Mr. Wolff:

There is a fourteen share purchase right there, too, isn't there?

Mr. Cushman:

I certainly don't—

The Court:

You could bring it out later, Mr. Wolff.

By Mr. Cushman:

Q. What was your answer?

A. In our file, Mr. Anderson on April 20, 1945, purchased five shares of Georgia Railroad at one hundred fifty-three and a half.

Q. All right. Now on April 16 there are some purchases there.

A. This record shows on April 16 that Mr. Anderson purchased seventeen shares of Georgia Railroad for his personal account at one hundred fifty-three and a half.

Q. Just a moment, sir. On that fourteen shares isn't it a fact that that was bought for his mother, registered in the name of Mary Poole Anderson?

A. Later it was. The cashier made no distinction as to who it was purchased for. Actually, the stock was registered and delivered in the name of Mary Poole Anderson, according to these records.

Q. All right, sir. Now are there any more purchases of Georgia Railroad Bank stock occurring at any other time during the month of April 1945?

A. I will go back to the records. Other than April 1945?

Q. Yes, sir, other than the two which you have specified.

A. There is a purchase on August 31, 1943.

Q. No, sir. Now if you please, sir, my question was this: Are there any other purchases of Georgia Railroad Bank & Trust Company stock indicated on your records during the month of April 1945 other than the two items to which you just testified?

A. Those two?

Q. Yes.

A. These records indicate only two purchases in April 1945. Those are the two we have spoken about, the purchase by Mr. L. T. Anderson.

Q. And your records indicate that seventeen shares were purchased and registered in the name of Mary Poole Anderson and five shares were purchased and registered in the name of L. T. Anderson?

A. That is correct.

Q. And there are no other purchases during the month at all?

A. Not charged to Mr. Anderson.

Q. All right. Now I hand you, Mr. Mason, a piece of paper which is apparently a part of the normal business records of Johnson, Lane & Space Company bearing certain printing and typewriting thereon, relating to seventeen shares of Georgia Railroad Bank & Trust Company, and bearing thereon an ink signature. I will ask you if you recognize the signature or the paper, if you have any knowledge of that paper or the contents thereof.

A. Yes, I have knowledge of it.

Q. Do you know whose signature that is?

A. Yes, sir.

Q. From your examination of the original records of the company which you have there before you and from your perusal of the information shown on this paper, are you satisfied that the information shown on the paper which I have just handed you is correct?

A. Yes, sir.

Mr. Cushman:

I would like to have this marked for identification.

(Petitioner's Exhibit No. 1 marked for identfcaton.)

By Mr. Cushman:

Q. I now hand you a letter dated October 7, 1955, on the letterhead stationery of Johnson, Lane & Space Company, addressed to Lewis T. Anderson, and bearing thereon a pen and ink signature. I will ask you if you recognize the paper, the signature, and after examining the contents of this paper and comparing it with the records which you hold in your lap if you are satisfied as to the accuracy of the contents of the letter.

Mr. Wolff:

Your Honor, he can queston the witness with respect to the contents of the letter. If there is anything he wants to do with it, all right.

Mr. Cushman:

He is not going to mind if I am going to try my case. I am just trying to make certain about the thing. I think by doing it this way he is going to know what it is all about.

Mr. Wolff:

I don't know what it is all about.

Mr. Cushman:

You are not supposed to know.

By Mr. Cushman:

Q. As far as you know, it is correct?

A. Yes, sir.

Mr. Cushman:

I would like to have this marked for identification.

(Petitioner's Exhibit No. 2 marked for identification.)

Mr. Wolff:

The information contained in Petitioner's Exhibit 2 is a copy of the invoice that has been introduced as Exhibit E, is it not?

Mr. Cushman:

I submitted the document to Mr. Wolff for examination of the document, not—

The Court:

Overrule the objection.

Mr. Wolff:

Petitioner's Exhibit 1 is a copy of Respondent's Exhibit H, one sheet, is it not?

The Witness:

Would you ask me that question again now?

Mr. Wolff:

Petitioner's Exhibit 1, the white paper, was prepared from the information contained on the yellow paper, being Respontent's Exhibit H, was it not?

The Witness:

It was prepared.

Mr. Wolff:

One was presented.

The Witness:

This was actually prepared (indicating). That is a copy of the original invoice (indicatng). Another copy was made of the invoice and this is a copy of the pink copy of the original invoice (indicatng).

The Court:

Will you start again and refer to the number of the exhibit?

Mr. Wolff:

Exhibit H, Your Honor, is a copy of the original invoice. Exhibit 1 was prepared from the original of Exhbit H, or a copy; a second copy of Exhibit H.

The Witness:

Prepared from a copy of the original.

Mr. Wolff:
Well, let's put it in.

The Court:
It will be received as Petitioner's Exhibit 2.

Mr. Wolff:
No objection to Petitioner's Exhibit 2.

(Petitioner's Exhibit No. 2 was received in evidence.)

Mr. Cushman:
No further questons on cross examination.

The Court:
Any further questions, Mr. Wolff?

Mr. Wolff:
No further questions, Your Honor.

Mr. Cushman:
If it please the Court, at this time—again in the interest of saving time—we would now like to have Mr. Mason testify as to the character and general reputation of the Petitioner.

The Court:
Very well.

Mr. Wolff:
Mr. Mason is his witness. He can do anything he wants to, Your Honor.

Whereupon, JAMES P. MASON, was called as a witness on behalf of the Petitioner and, having been previously duly sworn, testified as follows:

Direct Examination.

By Mr. Cushman:

Q. Your name is Mr. Mason?

A. That is right.

Q. You live in Augusta, Georgia?

A. Yes, sir.

Q. And you work with Johnson, Lane & Space Company?

A. Yes, sir.

Q. You have previously been administered the oath, and you understand that you are still under oath even though you are with me this time?

A. Yes, sir.

Q. How long have you lived in Augusta?

A. Forty-four years.

Q. That is, your entire life, sir?

A. No, sir. I am forty-seven.

Q. All right, forty-four years. That is good enough. Do you know the Petitioner, L. T. Anderson?

A. Yes, sir.

Q. And how long have you known him, sir?

A. I would say fifteen years.

Q. Do you know his general reputation with respect to character, honesty, integrity, and fairness in business transactions?

A. I believe I do.

Q. Will you state whether that reputation is good or bad, Mr. Mason?

A. I would say good.

Cross Examination.

By Mr. Wolff:

Q. How do you know of this reputation, Mr. Mason?

A. Well, sir, we would not have any dealings with Mr. Anderson in stocks and bonds or take his orders from him unless we thought that he had a good reputation.

Q. You mean unless you thought he had a good reputation or you thought he could pay you?

A. Unless we thought he had a good reputation.

Q. Was that reputation developed by virtue of the fact that Mr. Anderson always paid for the transactions with you or—

A. No, sir. I never heard of anything derogatory about Mr. Anderson. Having lived in Augusta and knowing so many people all my life, I think if he had had some question about his character I would have heard or known about it. I know nothing bad about him. His character is good.

Q. Did your company ever conduct an investigation with respect to his character?

A. Not to my knowledge, no, sir.

Mr. Wolff:

No further questions, Your Honor.

Mr. Cushman:

As far as Mr. Mason being our witness, we have no more questions.

The Court:

You are excused.

Mr. Wolff:
I understand that Mr. Mason is through and can go home.

The Court:
Yes.

The Witness:
Thank you.

(Witness excused.)

Mr. Wolff:
We have in the Courtroom Mrs. Smolowsky from the First Federal Savings & Loan Company in Augusta. We have the ledger sheets of the bank with respect to the savings account maintained by Mr. Anderson. As I understand it, there will be no questions asked and she can go.

Mr. Spillane:
I would like to point out that is a joint account of Mr. Anderson with Mrs. Mary Poole Anderson.

Mr. Wolff:
I will introduce this ledger-sheet of Account No. 535, being a savings account in the name of L. T. Anderson and/or Mrs. Mary Anderson wth the First Federal Savings & Loan Company in Augusta, Georgia; four ledger sheets.

The Court:
It will be received as Respondent's Exhibit I.

(Respondent's Exhibit I was marked for identification and received in evidence.)

Mr. Wolff:
Could we have a short recess, Your Honor. I want to determine who is the next witness.

The Court:
We will recess for the next five or ten minutes.

(Whereupon, a short recess was taken.)

Mr. Wolff:
The next witness, Your Honor, is Mr. S. J. Errington from near Augusta, Georgia.

Whereupon, S. J. ERRINGTON, was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

The Clerk:
State your name and address, please.

The Witness:
S. J. Errington; Augusta, Georgia.

Direct Examination.

By Mr. Wolff:
Q. Mr. Errington, are you acquainted with the Petitioner, Mr. L. T. Anderson?
A. Sir, you will have to talk a little louder to me. I can't hear very good.
Q. Do you know Mr. L. T. Anderson?

A. Yes, sir.

Q. Do you know his mother, Mrs. Mary Poole Anderson?

A. Yes, I do.

Q. Did you ever have any business dealings with either Mr. L. T. Anderson or his mother, Mary Poole Anderson?

A. Both of them.

Q. Both of them?

A. Yes, sir.

Q. What sort of business dealings did you have with Mr. L. T. Anderson?

A. Well, I went to his mother's place to rent a place and she sent me to him. He handled the arrangements. She was not able to see.

Q. What was that, a farm that you rented?

A. Yes, sir, a farm.

Q. You rented a farm from Mr. Anderson?

A. That is right.

Q. What years did you rent this farm, for how long?

A. Well, I moved there in the fall of 1929.

Q. Until how long did you rent this farm.

A. Ten years.

Q. For ten years?

A. Ten years.

Q. Did you not rent this farm up through 1949?

A. I did not.

Q. What sort of rent did you pay on the farm?

Mr. McNatt:

I believe ten years after 1929 is 1939. I don't believe it is material to this case.

The Court:

What is the materiality, Mr. Wolff?

Mr. Wolff:

I have a statement here that he was there for fifteen years.

The Witness:

I was there fifteen years. I was on the place fifteen years but didn't rent it fifteen years.

By Mr. Wolff:

Q. You owned it for fifteen years I understood you to say.

A. Didn't rent fifteen years; rented fifteen years square half.

Q. When was the last year you rented it?

A. The tenth year from '30, count from 1930. I moved there in 1928.

Q. And which years were you on share halves?

A. The last five.

Q. What was the last year on square halves?

A. I don't know the dates at all. I do not have an education or nothing to keep up with that.

Q. You were there fifteen years from 1929?

A. That is right, fifteen years.

Q. You rented ten years and—

A. And share halves for the next five.

Q. What do you mean by "share halves"?

A. You don't understand that, I don't reckon? The landlord furnished the land and fertilizer, and the tenant furnishes the labor and the stock and equipment.

Q. And then any crops that you get you split?

A. Go half, that is right. Yes, that is right.

Q. The last year you were there, what do you recall you gave on the share half basis? To whom did you give the share halves?

A. Mr. Anderson.

Q. Mr. Anderson?

A. Yes, sir.

Q. What did you give him?

A. Half of what I made.

Q. And what was that?

A. I don't know that, I could not tell you that.

Q. Did you split cotton?

A. Cotton, corn—split it all.

Q. Did you sell the cotton yourself?

A. No, sir. I didn't sell a bale of it.

Q. Now how many bales of cotton did you give him each year?

A. From five to six, or seven. Might have got seven in a year.

Q. You split seven with him?

A. Yes, sir.

Q. How much does a bale of cotton sell for, do you know, or did it sell for in those days?

A. Different prices, of course.

Q. What else did you raise on the farm other than cotton?

A. Corn, peanuts.

Q. How much corn did you get, about?

A. About, anywhere from seventy-five to a hundred bushels.

Q. Through the half?

A. Yes.

Q. You mean that you got one hundred bushel, say, and you split it with him and gave him fifty and you kept fifty?

A. No.

Q. You got one hundred and he got one hundred?

A. Yes, one hundred or seventy-five. That is guessing; I don't weigh or measure.

Q. How many peanuts did you raise?

A. Raise anywhere from two to three tons.

Q. And you split those?

A. Yes, split those, too.

Q. You rented the farm from Mr. Anderson or owned square halves with Mr. Anderson?

A. No, owned square halves with the other fellow.

Q. What other fellow?

A. Mr. Lagler.

Q. Mr. Lagler?

A. Mrs. Faglie's brother-in-law, that is right. He took over the possession in the last five years and wanted me to work for square halves and I did.

Mr. Wolff:

No further questions, Your Honor.

The Court:

Do you have any questions, Mr. Cushman?

Cross Examination.

By Mr. Cushman:

Q. Mr. Errington, back in 1929 when you went to rent this farm, I believe you stated that you went to see Mrs. Anderson.

A. That is right.

Q. And she sent you to see L. T. Anderson, her son?

A. That is right.

Q. The reason she sent you to him was because he was managing her affairs?

A. That is correct, managing her affairs.

Q. For the first ten years you dealt with him?

A. Through her.

Q. You dealt with him through her?

A. That is right.

Q. All right, sir. And in the last five years on this square half business, what you mean is that Mr. Anderson furnished you the land and the fertilizer, and you put up the equipment and labor?

A. That is right.

Q. And what you split is the crops you made?

A. Yes, sir.

Q. You don't split profit because you didn't make any profit?

A. That is right.

Q. Whatever came out of the ground, the harvest, you split?

A. Yes, sir.

Q. You split with Mr. Lagler?

A. Yes, sir.

Q. I would like for you to testify that Mrs. Mary Poole Anderson—she owns that land, doesn't she?

A. Supposed to when I left there.

Q. And during that time you dealt with Mr. Anderson and Mr. Faglie for Mrs. Mary Poole Anderson?

A. That is right; that is correct.

Mr. Wolff:

No further questions, Your Honor.

The Court:

Thank you very much.

The Witness:
Thank you.

Mr. Wolff:
I have no further witnesses to put on this afternoon Your Honor.

Oh, I do have some financial statements from the Citizens & Southern National Bank, Augusta, Georgia. These were statements that were prepared by Mr. Anderson and signed by him and submitted to the bank as of particular dates. There are nine sheets, Your Honor. They cover from 1941 through 1948. There might possibly be one year missing in there; the first statement being submitted January 1, 1941.

Mr. Cushman:
Actually, those are his financial statements as of December 31, 1940. It is dated 1941, but it has reference to his financial condition as of December 31, 1940. We have absolutely no objection to these statements insofar as they go—if it please the Court, we would be very anxious to get them in and respectfully request that the Court allow us to reserve our rights with reference to submitting any other portions of the statements which have not been introduced here. We are not satisfied about the completeness, and we also feel that they were made by Mr. Anderson in the ordinary course of business as background for the preparation of these statements.

The Court:
They will be received in evidence.

(Respondent's Exhibit J was marked for identification and received in evidence.)

The Court:
It is understood that counsel for the Petitioner does not qualify or admit the correctness of this exhibit.

Mr. Cushman:
Yes, sir. In their completeness, they would probably be a more accurate statement.

The Court:
Is there anything further today?

Mr. Wolff:
No, Your Honor.

The Court:
Anything further for Petitioner today?

Mr. Cushman:
Not today, Your Honor. We think probably we better go back and do some more talking.

The Court:
The Court will adjourn until ten o'clock tomorrow morning.

(Whereupon, at 5:00 o'clock p.m., a recess was taken until 10:00 o'clock a.m., Wednesday, October 12, 1955.)

Official Report of Proceedings

Before

The Tax Court of the United States.

Filed Oct. 31, 1955.

Lewis Thurston Anderson and Clyde Velma Anderson,
Petitioner,
v. Docket No. 35385-86.
Commissioner of Internal Revenue, Respondent.

Hearing at: Columbia, South Carolina.

Date: October 12, 1955.

Pages: 105-210.

In the Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson

Docket No. 35385.

and

Lewis Thurston Anderson, Petitioner,
vs. Docket No. 35386.
Commissioner of Internal Revenue Respondent.

United States Courthouse,
Columbia, South Carolina,
Wednesday, October 12, 1955.

The above-entitled matters came on for further hearing, pursuant to recess, at 10:10 o'clock a. m.

Before: Honorable Craig S. Atkins.

Appearances:

E. D. Cushman, Jr., Esq.; L. E. McNatt, Esq., and T. R. Spillane, Esq., for the Petitioner.

Herman Wolff, Jr., Esq., for the Respondent.

Proceedings.

The Clerk:

Docket No. 35385, Lewis Thurston Anderson and Clyde Velma Anderson; and Docket No. 35386, Lewis Thurston Anderson.

Mr. Wolff:

We worked late last night on stipulations and have not quite completed the stipulations. I would estimate that it will probably take us another hour.

Is that right, Mr. McNatt?

Mr. McNatt:

At least that long.

The Court:

How long?

Mr. McNatt:

About an hour, Your Honor.

Mr. Wolff:

My best suggestion at this time, Your Honor, is to return to the library and continue with the stipulation.

The Court:
Would you prefer to do it that way or go on with some of your witnesses this morning?

Mr. McNatt:
I believe it would be best to stipulate first, Your Honor.

The Court:
Do you agree to that?

Mr. Wolff:
Yes, sir.

The Court:
Very well.
Mr. Clerk, is there anything else this morning?

The Clerk:
That is all.

The Court:
What is your suggestion about convening, the time of convening?

Mr. Cushman:
I would say an hour, sir. Let's take a recess for an hour.

The Court:
We will take a recess, say, to eleven thirty.
The Court is recessed to eleven thirty.

(Whereupon, at 10:12 o'clock a.m., a recess was taken until 11:30 o'clock a.m., of the same day.)

(Reporter's Note: The proceedings were not resumed until 2:10.)

After Recess.

2:10 p.m.

The Clerk:
We will now resume with the Anderson cases, Docket Nos. 35385 and 35386.

Mr. Cushman:
If it please the Court, at this time I would like to call witnesses who will testify respecting valuation at this time. I think that is agreeable.

Mr. Wolff:
The way I understood it, yes.

The Court:
Proceed.

Whereupon, J. GERALD MULHERIN, was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk:
State your name and address, please.

The Witness:
J. Gerald Mulherin; Augusta, Georgia.

Direct Examination.

By Mr. Cushman:
Q. Mr. Mulherin, I ask you to speak up just a little bit louder because the Judge and the reporter,

the gentlemen sitting here, and the Government counsel want to hear you.

A. Yes, sir.

Q. Your name is Mr. James Gerald Mulherin?

A. That is correct.

Q. And you live in Augusta, Georgia?

A. Yes, sir.

Q. Approximately how old are you, Mr. Mulherin?

A. Well, I will be fifty-eight in February.

Q. How long have you lived in Augusta, Georgia?

A. All my life, sir.

Q. Born there?

A. Yes.

Q. Been in business there all your life?

A. Yes, sir.

Q. Will you tell the Court what educational background you have had?

A. Well, I was educated in the Catholic grammar schools and high school.

Q. I see.

A. Went to college.

Q. All right, sir. Now, Mr. Mulherin, are you presently engaged in any form of gainful occupation there in Augusta?

A. I am in the real estate business as a broker.

Q. In the real estate business as a broker?

A. Yes.

Q. Flatly, what do you mean?

A. I hold a broker's license as a real estate operator.

Q. Licensed by whom?

A. The State of Georgia.

Q. And I assume you also have the necessary license for the City of Augusta?

A. Yes, sir.

Q. Mr. Mulherin, at what time did you go into business in your life?

A. Well, when I was about sixteen years old.

Q. What business did you go into?

A. My father was in the lumber business and I went in with him.

Q. What type of work did you do?

A. I started out in the yard inspecting lumber and gradually worked up to shipping clerk and then got in the office and got in the Estimating Department, and then into selling.

Q. What type of duties did you perform in the Estimating Department?

A. Well, they sent me to Chicago to the Mill Work Cost Information Bureau School to take a course up there—which the company paid for—to teach me how to take the necessary information from a set of plans so as to make up an estimate of hull work in a house.

Q. And did your estimate work include also the determination of approximate costs for the construction?

A. Oh, yes.

Q. At the time that you were doing this work, was your experience confined solely to the lumber business, or did it include other matters with reference to other forms of building material?

A. Well, we were in the supply business. We sold plaster, paints, lime, cements, roofing, and all the other things that went with it—doors and windows—all the building materials, besides lumber.

Q. In other words, your experience during the time that you were working with the lumber company was through the building supply business?

A. Yes.

Q. For how long a period of time were you engaged in this particular line of work?

A. Well, until I went in the Army. Then when I came out of the Army, I went out to what was then known as the Camp Hancock in Augusta, Georgia. There was an Army camp there.

Q. Mr. Mulherin, when were you there?

A. That was in 1919.

Q. All right, Mr. Mulherin, go ahead.

A. Now my father and some of his associates bought that camp and I was put out there to salvage it. And I salvaged the camp.

Mr. Cushman:

Excuse me. I wonder if we can cut that fan off. It is right troublesome.

The Court:

Surely.

By Mr. Cushman:

Q. Now, Mr. Mulherin, I believe when we interrupted you, you were discussing the salvaging of the camp. Go ahead from there.

A. We salvaged the camp, and after that was over I went back to my other plant with my father.

Q. All right, sir. How long did you remain there?

A. Until 1928.

Q. And what type of duties did you perform at the lumber plant?

A. When I left there, I was a salesman. I was traveling South Carolina.

Q. All right, sir. After you left the lumber plant in 1928, what type of business, if any, did you then go into?

A. I went into the real estate business, and the building business.

Q. Mr. Mulherin, will you please describe in some detail what you did when you were engaging in the real estate business and the building business?

A. I was floundering at first, beginning. I didn't have much money but I struggled along and made a living by soliciting people who wanted to sell and selling to prospects that wanted to buy.

Q. In other words—

A. Then I found a partner who had a little money and we went into building small houses.

Q. Going back to the real estate phase of your operation, what you actually mean, then, is that for a period of years you engaged in buying and selling real estate and getting other people to do it?

A. Yes.

Q. And then you went into the construction business?

A. Yes.

Q. Now, Mr. Mulherin, elaborate on that, if you will, just a little bit.

A. I stayed with the construction business, house building. I did not go into any commercial building—did not have the finances and didn't have the knowledge. Mine was strictly a house building business.

Q. You and your partner built houses?

A. Yes, sir.

Q. All right. You started in about 1928?

A. Yes, sir.

Q. For how long a period of time did you remain in that business?

A. Well, I was with that partner until we were forced out of business due to tight times, and then I went into business for myself and formed what was

known as Mulherin & Company. I had a little credit, and I kept on buying and selling.

Q. Did you engage in your activities under the name of Mulherin & Company?

A. Well, until the war in 1941.

Q. Now, Mr. Mulherin, in your buying and selling activities, did you ever act as an agent for sellers or buyers—as an agent for sellers or buyers?

A. Oh, yes.

Q. Will you elaborate on that?

A. An agency, we considered it an agency when you—if I go to you and you have a piece of property and you wanted to pay a commission to sell—

Q. That is exactly what I want to get. You performed that type of services?

A. Yes, sir. I was paid a fee for my services.

Q. And actually what you did was to bring together buyers and sellers for the purpose of buying and selling property?

A. Yes, sir.

Q. And you were in that business until 1941?

A. Well, yes.

Q. All right, sir. After 1941, what business, if any, were you in?

A. Well, during the war when the building business was bad—you could not get the building materials and things—I went to work for the Richmond Construction Company in 1943 because they were doing work for the Army down in Camp Gordon and other places. They could get the materials. In fact, nobody could get material but the Army in those days, and you had to do that to make a living. I worked for them for two and a half years.

Q. What type of duties did you perform during that period?

A. Well, I ran the office and I was the man to keep the job going, keep the material there to keep the men at work.

Q. Could you classify your duties as being those of a general superintendent in charge of construction?

A. No, I was not in that position. We had a superintendent, Mr. Clarence Mudd.

Q. What would you call yourself?

A. Office manager.

Q. Expediter?

A. Yes.

Q. After that, what did you do, sir?

A. Well, after that I went into the laundry business. I got hooked in the laundry business.

Q. Well, we will get you out of the laundry business. How long did you stay in the laundry business?

A. I stayed in the laundry business until I lost, I got down to 144 pounds and then I got out.

Q. I can understand that, sir.

You stayed in the laundry for a year and a half?

A. Yes.

Q. After you got out of the laundry business, what did you do?

A. I went back into real estate.

Q. And approximately when was that?

A. In 1948.

Q. Now when you went back into the real estate business, was it in the same general nature as when you left it?

A. In the meantime, the State of Georgia passed a law that you had to stand examination to be a broker, and you could not be a broker unless you worked

for somebody a year. So I had to go to work for somebody for a year.

Q. Then did you subsequently stand the examination?

A. I stood the salesman examination. I stayed with Mr. Harry Bill for a year and then went into business for myself.

A. Seven examinations?

A. Salesman examination. I was a salesman first, and then I had to serve one year before I stoo d examination for broker.

Q. Did you?

A. I did, and at the same time I stood the examination for an appraiser and inspector for the Veterans Administration as a field appraiser. I am now qualified as an appraiser and as a fee inspector for the Veterans Administration and have been since about the early part of 1950.

Q. As I understand, you acquired the right to perform these services after you had stood examinations to show your qualifications?

A. That is right.

Q. Did you say "fee appraiser" or "field appraier"?

A. Fee appraiser. In other words, we are not employees of the Veterans Administration. We are paid by the veteran. He has to put out a certain amount of money.

Q. Actually, then, what you mean by "fee appraiser" is that you work on a fee basis rather than on a salary basis?

A. Yes.

Q. What are your duties as an appraiser for the Veterans Administration? What do your duties consist of?

A. Well, my principal work is making an appraisal from plans and specifications. They have seven appraisers, I think, in Augusta. I get very little of the existing construction. I do get some every now and then, whatever they sent by, but 99 per cent of my work is from plans and specifications.

Q. Do you have anything to do with the preparation of what is commonly called a certificate of reasonable value?

A. That is done in Atlanta.

Q. In Atlanta?

A. Yes.

Q. But you do appraise?

A. Yes, for reasonable value. They sent me three sets of plans, three sets of specifications, and three plant plans and any other pertinent information. And I make up the appraisal and sign all three of them and sent it back to Atlanta. Then they sent out the certificate of reasonable value.

Q. And you performed those duties on behalf of the Veterans Administration, but you were paid by the veteran borrower?

A. Yes, sir.

Q. What are your duties as an inspector?

A. Well, they will send me a set of plans and specifications and appoint me as inspector on a job after they have issued a certificate of reasonable value. Then when the builder is ready for me to make the first inspection, he calls me and I go out and inspect the premises that he has—perhaps inspect them for the foundation, and issue him a report on that, just give him a copy of it and send the other to Atlanta, and I keep one for my file.

Q. What is the purpose of the inspection? Why do you inspect?

A. To see that the house is built according to the plans that have been approved by the Veterans Administration.

Q. All right, Mr. Mulherin, go ahead.

A. And then there is another inspection made after the house is hulled in, and then there is a final inspection—three inspections made.

Q. All right, sir. Now I assume after the third inspection, that concludes it?

A. I mean three if he has it right. On one occasion I have made nine or ten inspections on one house, but there are supposed to be three inspections if he does it right.

Q. It is your job as an inspector to see that these houses are built according to the plans and specifications as approved by the Veterans Administration?

A. Yes, that is right.

Q. Now, Mr. Mulherin, just to nail it down good and tight, could you give an idea of how many pieces of real estate you have appraised in your life?

A. You mean a guess?

Q. Well, a reasonable guess—a guesstimation, maybe.

A. Well, three thousand.

Q. About three thousand pieces of real estate.

A. That is a guess.

Q. You are satisfied that it is at least three thousand?

A. A great deal more than that.

Q. And you have appraised the value of that real estate?

A Yes, sir.

Q. Do you have any way of knowing?

A. I don't mean for the Veterans Administration, I mean for my lifetime.

Q. I am talking about your lifetime.

All right. Do you have any idea how many pieces have been bought, sold, or exchanged as a result of efforts on your part?

A. Well, that would be a right hard question to answer. You know the greatest part of the work that I am doing now is being done under what we call a mastery, you see. That is a master certificate of reasonable value. That is where they will go in and build fifty or one hundred houses. Now they do not know who they are going to sell those houses to, or even if they are going to sell.

Q. Will you state whether or not you have had extensive experience—perhaps this is a little leading—in participating in the buying and selling of real estate?

Mr. Wolff:

Objecton, Your Honor. I do not think the witness is qualified to testify as to whether his experience is extensive. He can tell how much experience he has, but I want to know what "extensive" means.

The Court:

Mr. Cushman, I do not know that anyone would know except the witness.

Mr. Wolff:

I do not think it should be a part of the witness's testimony.

The Court:

Could you not rephrase your question a little differently?

Mr. Cushman:

Yes.

By Mr. Cushman:

Q. Mr. Mulherin, how much experience have you had with reference to the transfer of real estate, buying and selling, and so on, either for yourself or as the agent for other people?

A. When you say how much experience have I had, I cannot answer specifically, except to say that I have made a pretty good living out of it.

Q. And that is what you have done all your life?

A. Since 1928, yes, sir. Ninety per cent of the time.

Q. And you have made a pretty good living?

A. Yes, sir; raised four children.

Q. Would you say you had been associated with several hundred or several thousand pieces of property, perhaps?

A. Yes, but I don't think these appraisals I make on these subdivisions where they built fifty or one hundred houses—I don't think it has one thing to do with the sale of it.

Q. No, of course not. Actually, what I am talking about is that you have activities as a real estate dealer. That has been your livelihood and you have made a pretty good living all your life?

A. Yes, sir.

Q. Do you have any idea how many houses you have constructed in your life?

A. Well, at one time about two years ago I tried to do a little figuring. I figured I had either built for others or built for myself and my partners and sold in Augusta about two hundred houses.

Q. About two hundred houses?

A. Yes.

Q. All right, sir. Now, Mr. Mulherin, do you have any—I withdraw that phrase.

Have you had any experience with reference to the placing of mortgage money?

A. Yes, sir.

Q. Will you please state what that experience has been?

A. Well, a part of the real estate business is obtaining loans, because before the days of the Government guarantying loans, why to sell a piece of property we had to find somebody to lend it because nobody paid cash and you had to find somebody to lend the money that the buyer did not have so you could make the sale. If you sold a $3,500 home back in the days before the Government was guarantying loans, the average person only paid about $500 down. Well, you had to find somebody to lend $3,000 on the house to make the sale. So I had as much experience in getting loans as I had in selling. You had to find a lender on nearly every sale you made.

Q. All right. Based on your experience, would you state generally what the requirements are and have been for some several years with reference to percentage of loan or the amount of th loan with reference to the value of the property, the location of the property, the type of construction—what I mean to say is, what do lenders usually look for in making a loan?

A. That could not be answered by any one statement because all are different; someone six per cent, someone else seven per cent, and someone eight per cent. And the ones who want eight per cent will go higher, they will take a little bit bigger risk than the others. Today it is mostly 60 to 70 per cent.

Q. Sixty to seventy per cent appraised value of the property?

A. Yes.

Q. If you know, will you state with reference to the types of construction on which they will lend money?

A. Well, they are peculiar about that, too. A lot of people lend in one part of town, lend freely and go a little bit stronger than you think they go. You take that same lender in another part of town and he would not lend you a dime on it. He would not want it. You cannot answer that question with one answer. People are different, and people who represent lending institutions are different. I have submitted a house to a real estate lender back in Augusta and have been laughed at, and then I took it right down to somebody else and got the loan without any trouble at all.

Q. In other words, you have had experience in the actual placing of loans and you know what lending institutions are doing. Some will go one way and some another.

A. I have found them that way, yes.

Q. And you state as a general practice, based on your observation and experience, that most lenders do not like to go over 60 or 70 per cent of the actual value of the property?

A. As a rule they don't want to go over that.

Q. Now, Mr. Mulherin, what experience, if any, have you had with reference to the sale of mortgage paper?

A. Well, I have had very little experience with that. I have had it offered to me and I have tried to place it, and I have placed very little. But it was a discount when it was offered.

Q. Well, do you mean you have had very little or that you have placed very little?

A. What it was, somebody had a piece of property sold and probably had taken a paper on it and needed money and was willing to sell at a discount to get cash.

Q. I see. You mean you had a little bit or you have been only able to place a little bit?

A. Other people go into it more than I ever did. Other people in town go into that class of business much more than I ever did.

Q. Generally speaking, is it your observation that money on a mortgage is placed there, that is a good loan and that is the end of it?

A. As a rule, yes.

Q. Now you have been living in Augusta, is that correct?

A. Yes, sir.

Q. Do you know, generally speaking, where the streets are in Augusta?

A. I do.

Q. Well, you should know, you have been there all your life. Do you know where Chaffe Avenue is?

A. Yes, sir.

Q. Do you know approximately where 822 Chaffe Avenue would be?

A. Well, I would say 822 Chaffe Avenue would be between Hick Street and Fendrick Street.

Q. All right, sir. Do you know where, are you familiar with the country which lies over in South Carolina between Belvedere and Clear Water.

A. Well, I have been on the road lots of times, go through there.

Q. Do you know where it is?

A. Yes, sir.

Q. You have been through there many times?

A. Traveled through, yes.

Q. Do you know where Brookside Avenue is?

A. I don't know the name of Brookside.

Q. All right. Do you know where Skinner Road is around Augusta?

A. Yes.

Q. Are you familiar with that area?

A. Yes.

Q. You know where Sand Bar Ferry Road is around Augusta?

A. Yes.

Q. You know where it is?

A. Yes.

Q. Do you know where Tuttle Street is in Augusta?

A. Yes.

Q. Would you know approximately where 522 Tuttle Street is in Augusta?

A. Well, my guess is that 522 Tuttle Street—I know it is on the north side of Hick Street, but I think it is btween—I don't know. Between Hick Street and Broad. I forget it.

Q. Do you know where Emmet Street is in Augusta?

A. Yes.

Q. Do you know where Calhoun Street is?

A. Yes, sir.

Q. First Avenue?

A. What First Avenue?

Q. I think they used to call it Tutt Street.

A. You mean Tutt Avenue; I never heard it called Tutt Street.

Q. You know where Tutt Avenue is?

A. No.

Q. Do you know where Walker Street is?

A. Yes.

Q. Forest Place?

A. Forest Place?

Q. I don't think you know where that one is.

A. No.

Q. Do you know where Cooper Street is?

A. Yes.

Q. Do you know approximately where 1352 Cooper Street would be?

A. Yes.

Q. How about Buena Vista Avenue, North?

A. I know where Buena Vista is, but I have never dealt with anything in North Augusta.

Q. You know very little about northern Augusta except in a general way?

A. Yes.

Q. Now, going back over this matter, what is the general type of property found on Chaffe Street in the general vicinity of 822?

A. Well, it is property that has always been rent property until recent years. I don't think—very few people in there ever own their homes, and the houses I used to rent for about twenty dollars a month up until we had a shortage of houses after the war.

Q. What is the general type of construction?

A. Frame; most of them are fifty, sixty years old.

Q. Wooden frame?

A. Built on pillars; no sub floor, no storm sheeting.

Q. Would you classify the type of construction as being cheap or expensive?

A. No, I would not classify it as cheap. It was what they were building in those days, fifty or sixty

years ago, to rent for fifteen dollars a month, sometimes twenty dollars a month.

Q. You would not say that it is located in one of the better residential sections of Aughsta?

A. No.

Q. And generally speaking, what type of tenants were there?

A. Most of the people there were people who worked in the mills. They were there in the Southerly Mill and in th Graniteville plant on Green Street.

Q. And actually the property was designed to rent for twenty dollars a month?

A. Yes.

Q. How about the property out on Skinner Road there? What is the general type of property out there with reference to the construction or owners or occupants?

A. You mean as of now?

Q. Well, just take it from the time you found out anything about it and bring it up to now.

A. Well, now Skinner Road—I built four houses on Skinner Road in 1940. That is when I quit. And at that time there were only two houses across the street on Skinner Road on the south side of Raised Creek besides these four I built. Just above me there, there were two little frame houses there that were built by people that owned them. I don't know who they were. I know one was a wa ch repairer, I forgot his name. If you know his name, I would recognize it. Those were the only houses there.

Q. When was that? What year do you have reference to?

A. 1948.

Q. 1948. All right, sir. Those were two little houses built by a watch repairer. You do not know what his name was?

A. I do not remember his name. I would remember it if I heard it. He lived on the ten hundred block of Broad Street.

Q. How about the general type of construction down in that neighborhood, 420 Sand Bar Ferry Road?

A. I know all about that stuff down there.

Q. Well, we will get to that just a little bit later. Do you know about the general type of construction on Tuttle Street, 520 Tuttle Street?

A. Well, that is the middle district. That is strictly in the middle distrct, King Mill.

Q. What type of houses?

A. Just across the King Mill Bridge and twenty blocks to the left.

Q. Wooden frame?

A. Yes, sr.

Q. No sub-floor?

A. No. They were cheap houses.

Q. All right, sir. How about the property on Emmet Street, 1100, 1101, 1119? Just 1100 specifically, what was the general type of property in the 1100 block for several years?

A. On the east side there have been some houses built in the last six or seven years, I think maybe eight years, but on the west side it is pretty well built up. There is old houses over there—and they certainly have better material in them than these houses do on the east side, but I think they are all houses that sold, we used to sell them for $1800 to $2100, $2200.

Q. Would you characterize that as the same general type up around the King Mill there?

A. Oh, no, better houses than that.

Q. Better houses than that?

A. Yes, sir.

Q. All right. How about Calhoun Street?

A. What part?

Q. 549, in that general area.

A. 549 Calhoun Street is the colored section.

Q. That is what I want to know. That is a colored section?

A. Yes, it is.

Q. What is the type of construction there, Mr. Mulherin? The Judge knows and counsel knows, but we have to put it in the record.

A. They are all houses rented to colored people, but at one time there was one two-story house built out of brick. I don't know who ever built it down there, but there was one two-story house down there. The rest of them were just frame houses and mostly tenant houses; that is, two-family houses rented to colored people.

Q. Have any inside toilets?

A. No, no. None of them.

Q. All outside toilets?

A. Yes.

Q. I don't imagine any of them were painted.

A. Well, maybe sometime ago.

Q. Generally speaking, it was run down?

A. Run down property, poor property.

Q. Poor property, run down property?

A. Slums, just about. I would call them slums.

Mr. Wolff:

I think that is a leading question. I think the witness has testified as to the type of the property without going into it any further.

Mr. Cushman:

I think he is right, sir. I will shut up.

By Mr. Cushman:

Q. Move on to the next one. How about Heckle Street, in the vicinity of 1921 Heckle Street?

A. That is the first block off Walton Way, and it has always been low in there and been hard to sell a house in there. I know that; I have tried to sell them in there. In fact, I had two lots across the street and had to sell them for less than I paid for them.

Q. What do you mean?

A. It is just that all people do not like it up there. It will sell, but it will sell for a price.

Q. A low price?

A. Yes, sir.

Q. How about Walker Street now?

A. What part?

Q. 408, in that general vicinity.

A. Well, that is an old part of Augusta, the lower part that did not burn during the fire of 1916. There were some nice old homes there in years gone by.

Q. What was it like during the 40's down in there?

A. Well, that was when the depression was getting over, and they rented a lot of people owned homes down there, nearly always two-story houses; frame, sixty or seventy years old.

Q. All right, sir. How about the property in the vicinity of 216 Cooper Street?

A. Well, that is about on the par with Chaffe Avenue.

Q. Cheap rental property?

A. Yes, sir, middle property; houses close together; no yards; houses built on 25 and 30 foot lots right next slap up against each other.

Q. Almost reach out the window?

A. No. None have driveways—maybe one or two, but it is almost hard to find one that has a driveway.

Q. Now you have had experience, have you not, in disposing of some of the types of property which we have just discussed here?

A. Yes.

Q. Will you state whether or not, generally speaking, and with particular reference to 1940, was it difficult to dispose of?

A. That all depends what you are asking for it. You can always sell anything if it is cheap enough, but to get what the sellers wanted was not always easy to do. That is what kept you from making sales.

Q. In other words, the buyers wanted to pay practically nothing or else they were not interested?

A. Well, that is true pretty generally. The buyers always wanted to buy for less and the sellers always wanted to sell for more.

Q. With reference to this, it was generally hard to dispose of?

Mr. Wolff:

Objection, Your Honor. I think that is leading. It is not necessary to get into an argument with the witness, too.

The Court:
Some of the questions are leading, Mr. Cushman.

Mr. Cushman:
I agree with the Court that they are leading, but we are trying to get the facts before the Court as quickly as we can.

Mr. Wolff:
I object—

Mr. Cushman:
Now we are arguing. Can I go ahead, Your Honor?

The Court:
Yes, sir.

By Mr. Cushman:
Q. Based on your experience as an appraiser and on your experience as a placement agent for mortgage money—

Mr. Wolff:
Objection, Your Honor.
I will let him finish his question.

Mr. Cushman:
Read the question.

(The pending question was read by the reporter.)

By Mr. Cushman:
Q. —and based on your opinion with reference to what you just testified, will you give us your opinion as to whether properties would be qualified for loans

or whether lenders would be interested to lending money?

Mr. Wolff:
Objection.

The Witness:
Give me something specific.

The Court:
Wait a minute. There is an objection we have to rule on.

Mr. Wolff:
I feel at this point he is asking for opinion testimony of the witness, and the qualifications have not been fully delved into. I would like the right to cross examine the witness at this time with respect to the witness's qualifications to testify with respect to an opinion.

The Court:
Do you have any objection to his cross examining the witness now before you ask the question?

Mr. Cushman:
Let me just check my notes here, if Your Honor please.
If he would like to cross examine now with reference to the witness's qualifications, I am perfectly agreeable.

Mr. Wolff:

Your Honor, I would like to have the last question and answer read back, if there was an answer to the last question.

(The pending question was read by the reporter.)

Mr. Wolff:

Your Honor, could we have a five minute recess.

The Court:

We will take a five minute recess.

(Whereupon, a short recess was taken.)

Mr. Wolff:

Your Honor, after consideration of the Petitioner's answer to the last question it seems to me that he has not answered, or the question has not been given which is possible to cross examine the witness as to qualifications to answer at the present time. For the present I will withdraw my request.

The Court:

All right.

By Mr. Cushman:

Q. Now, have you ever had any experience with reference to assessing property for purposes of county taxes?

A. I was on the County Board of Tax Assessors for the years 1938, 1939, 1940, and 1941. I was on the City Board of Assessors for the years 1934 and 1935.

Q. In Augusta?

A. Yes, sir.

Q. Will you indicate what type of duties you perform as a member of these two boards?

A. Well, the procedure at the city is different from what it is at the county. The city, they use the same books from the year before unless the party who is making a tax return asked for some change in his taxes. That is, on property that has already been assessed in previous years.

Now for instance, you owned a home and you returned it last year and you went in this year and it has already been acted on and you didn't ask for a change, it would be put on the books the same that year as for the year before. So there would be nothing to consider there for the Board of Tax Assessors. We only considered such items as new construction and where the taxpayer was asking for a review for reduction, or for some other reason there might have been some improvements made and change the assessment from the year before.

Now the county had an agreement with the city where they paid the city a stipulated sum of money for the use of their books, for that covered all the property within the city limits of Augusta. The county had a procedure they followed on taking the city's valuations. So they did the same thing down there unless there was some reason to review it. But out in the county where they did not have any information that they bought from the City of Augusta, the procedure was we had to keep our eyes open to see where new houses were being built because in those days there was no—we didn't have any rule over there that you had to get a county permit to build a home. So it took viligance to see that the new construction went on the books.

Q. Let me ask you this: Would it be fair to state that your duties consisted largely in determining the value of real estate for purposes of placing an appraisement on the tax books?

A. That is right.

Mr. Wolff:

Your Honor, that was a very leading question. I hate to raise objections, but it seems the witness ought to be able to testify as to something like that. I request the Petitioner's counsel to refrain—

Mr. Cushman:

He is right. I was only trying to save time. He said that is what he did. The facts of the matter, I don't think it will make a—I will refrain from making leading questions.

By Mr. Cushman:

Q. Now you previously stated that you were familiar with the property on Sand Bar Ferry Road. Are you also familiar with the property on Colorado Street and Orange Street down on the Riverside Development?

A. In the development on the south side of the Sand Bar Ferry Road below the City of Augusta there are two subdivisions. One is called Sunnydale Park. The other I understand, Mr. Anderson's property, is known as Riverside Park.

Q. All right.

A. Two separate sub-divisions.

Q. Will you state whether or not you are familiar with the subdivision owned and built by Mr. Anderson known as the Riverside Development?

A. Yes sir.

Q. Will you please describe for the Court, based on your observations, what type of construction went into the Riverside Development, the type of houses, the type of owners, restrictions on the property, the location of the property, and any other pertinent facts relating to the valuation of that property. Just start and tell us what you know about Anderson's property.

A. Well, the first time that I ever made an examination of any of Mr. Anderson's property was in 1938 when I went down there as the only member of the Richmond County Tax Board. I was the only one who was able to go. The other two members, one was a very sick man and the other was paralyzed at that time. I went down and was the only man to go down and examine.

I saw the type of construction Mr. Anderson was putting up down there, and I know how the houses were built. I looked under them and looked all through them. I saw some half built and some being built and some completed. Those houses were built without any footing under the foundations. None of the houses had the pillars under them at what is considered the proper place to put them in good construction; that is, at a bearing point. Mr. Anderson built houses and he put a row of pillars in front and back. Whether they were in front or not, he put a row of pillars down the middle and they were just setting on the front.

Most concrete block, some had no mortar between them. He would level the floor joist up in there with anything he could get his hands on. It looked like sticks and pieces of flooring or pieces of 2 by 4 or anything else. Then he would use 2 by 8 floor joists. All I ever saw were 24 inches apart.

I saw maybe one or two houses where if he ever used any sills at all on that, it ran from a pillar to a pillar. If his sills ran out and had to be pieced between pillars, that did not seem to make any difference. He pieced them anyhow.

I saw maybe one or two of his houses that had a subflooring in them. I never saw any houses that were not built with the studs two feet apart. I never saw any house built with No. 2 common flooring. I never saw any of his houses that did not have the receiving joist two feet apart and the rafters two feet apart. I never saw any house that he built that had a mill-made window or door frame in it. All of them were made out of whatever lumber he had handy, and none of them had rabbeted parts on them so they were waterproof.

All of them were sheet rock houses and the joints were taped. I don't think, at least I didn't see any of them that were filled with the filling that you are supposed to put in sheet rock construction. All of the windows in all of the houses I saw were what are known in the building trade as one and an eighth plain rail sash. The top sash is stationary, the bottom sash you have to put a stick under it. There are no weights or cords or balances in it or anything like that. And his door frames were the same way.

I never saw any collar trim on any house Mr. Anderson built. When it came to trimming out the door or window, he would rip a piece of sheeting either three niches wide or three and a half or whatever suited the purpose and have square joints. There were nails at least up the side and a piece across the top. There was no putty ever used to make a nice joint or anything like that. I think if an instrument were put on them it would not be square even.

I didn't put an instrument on any of them, but I nave pretty good eyes on those kinds of things and I know that on his 5-V type roof houses that he used 1 by 3 narrow strips and they were about four feet apart. That was all nailed across the rafters every four feet, and there was a metal roofing nailed on that.

Now I saw one or two houses that he used mortar locks on, but 99 per cent of them had rim nob locks. That is the lock that is slabbed on the inside. He used that on the front door. His front door is usually 103 eight-inch doors, but the back and side doors are either one and one-eighth thin door, panel doors, or they were homemade doors out of flooring.

Now I don't remember ever seeing any house down there at that time, during 1941, that had any kind of plumbing in. He just had a pitcher pump in the yard and what we call a W.P.A. outhouse out in the yard. It was a toilet.

Q. If you know, state whether the same thing is true with reference to his construction on Orange and Colorado Streets in 1947 and 1948.

A. I did not go down there during 1947 and 1948 to examine any of the houses at that time, but I have been down there since then to examine them and I saw no difference in any of them except with—if anybody made an improvement you could tell it because it was done by mechanics, it was made by somebody who knew how to do it. You could tell by simply looking at it.

Q. Then is it your position, based on your observation, that the construction whether in 1937 or 1947 and 1945 corresponds generally to the testimony which you have just given about his houses?

A. I don't think a union man ever worked on the job. It didn't look like union men's work, it looked like laborers.

Q. You don't know anything about Anderson's Brookside property?

A. No, sir.

Q. You don't know anything about the property in North Carolina?

A. It looks like the stuff on—

Q. Looked like the same type of stuff?

A. Yes, sir.

Q. Your testimony was confined largely, with the exception of that last statement, to the Riverside Development?

A. Yes, sir.

Q. That is what you know best of all?

A. Yes, sir.

Q. All right, sir. Have you ever had occasion to attempt to place any loans on that property?

A. No, I never would have tried to place a loan on that property with any of my clients.

Q. Do you know whether or not there was any market for the mortgage loans or any mortgage paper on Anderson's property down there?

A. I don't believe that any lender in Augusta would have made a loan down there.

Mr. Wolff:

Objection, Your Honor. I do not believe he is qualified to testify as to what other lenders would do. He testified what he would do.

Mr. Cushman:

I think he is qualified, Your Honor. He has testified about his familiarity with the property, the placing of mortgages down there. If he is not qualified, I am afraid we have wasted almost an hour.

The Court:

I think the witness is qualified to answer the question.

By Mr. Cushman:

Q. Then it is your considered judgment, based on your experience, that there was no market for Anderson's mortgages on that property down there?

A. That is my opinion.

Q. Do you know whether or not there were any restrictions with reference to the use and occupancy of the property, the cost of construction, placing of construction on the lot, or anything of that type?

A. What year?

Q. Any year.

A. There is now, but there was not then back in the days I was looking at it. I was talking about 1938 to 1941.

Q. How about 1947 to 1948?

A. No, sir. I could not be positive as to just what year our building code went into effect, but I don't think we had any then in 1948 for Richmond County. We had for the city but not the county.

Q. And Riverside Development was located outside of the city limits of Augusta and was county property?

A. Yes.

Q. There were no building restrictions of any kind?

A. There was no water or sewage. It is very low down there and septic tanks do not work properly down there. There just was not any demand for property down there, and lenders would have been afraid to lend down there.

Q. You have testified here in some great length as to the four inches between the joists and the studs

and the rafters and the roof and so on, and the u[illegible] of roof and trim, et cetera. Would you state whether or not the type of construction to which you have testified is good construction or bad construction?

A. It is bad construction in my opinion.

Q. What distance between the studs and the joists and the rafters, if you know, is considered good construction?

A. Sixteen inches on certain spans, and on other spans a greater distance down to twelve inches. Over fourteen feet on floor joists for a 2 by 8, we would not consider good for construction unless it is twelve inches apart.

Q. In other words, from your observation of all of Mr. Anderson's houses down on the Riverside Development came under the category of bad construction?

A. Very poor.

Q. Do you know, generally speaking, what type of people lived down there in that sub-division, what their income bracket was?

Mr. Wolff:

I do not think he can tell the income bracket.

Mr. Cushman:

I asked him if he knew, Your Honor.

The Court:

If you know.

The Witness:

I could say as to what they earned, I could not say yes or no. I could say what bracket they were in, but not what they earned.

By Mr. Cushman:

Q. What bracket?

A. Low bracket.

Q. All right, sir. Did you ever at any time try to place any of the paper which Mr. Anderson had on that property down there?

A. Never submitted to me.

Q. Never submitted?

A. No.

Q. And you are satisfied that no lender would have accepted had it been submitted?

A. I have had property down there offered to me to sell and I have examined it—not Anderson's property—and before trying to sell it I tried to find out whether I could get a loan because the people that wanted to sell it wanted cash; they could not sell on credit. That was in Sunnydale just above there. When I talked to lenders about it they would not even go down on Sand Bar Ferry Road. I did not try to sell; could not get anyone to go down. No water, no sewage, no nothing.

Q. It is your position that the mortgage paper which Anderson did have had no market value at all?

A. I don't think so.

Mr. Wolff:

Your Honor, I make a motion to strike the answer. To say that he had an opinion that the mortgage paper had no value, I do not think any qualification has been made with respect to Mr. Mulherin's right to answer that question, his ability to answer the question. That is a long ways, stating an opinion.

The Court:

The answer will be stricken. It was an improper question.

Mr. Cushman:
All right, sir.
That is all, sir.

Mr. Wolff:
No questions, Your Honor.

(Witness excused.)

Whereupon, W. T. BURCHHALTER was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk:
State your name and address, please.

The Witness:
W. T. Burchhalter; 225 Masonic Building, Augusta, Georgia.

Direct Examination.

By Mr. Cushman:
Q. Mr. Burchhalter, you live in Augusta?
A. I live in North Augusta. My place of business is in Augusta. Also, I have a small office in North Augusta.
Q. What type of business?
A. Real estate broker.
Q. You are licensed by the State of Georgia?
A. I am.
Q. And you also have a license from the City of Augusta?
A. Yes, sir.

Q. How long have you been in the real estate business?

A. I started in the real estate business in 1937 as a salesman. I have a broker's license and operate my own company and have done so for the last four years.

Q. But you have been connected with it since 19—

A. 1937.

Q. Continuously throughout that time?

A. Yes, sir.

Q. Generally speaking, what type of business do you transact under the heading of real estate business?

A. Well, being a broker I list property for sale, appraise property for the purpose of selling, handle G.I. and F.H.A. loans, and also build some houses, too.

Q. And you have been doing that general type of work for some eighteen years?

A. Well, I have been in my own business for four years. Prior to that I was a salesman, and a salesman cannot operate in that market. But I was a salesman for other brokers.

Q. How many houses have you built, about?

A. I would say that I have built fifty houses.

Q. Since 1937, will you state whether or not your principal means of livelihood has been that of a real estate dealer?

A. It has.

Q. I notice that you used the word "appraisal" a few minutes ago. What has been your experience with reference to appraising the value of real estate?

A. Well, in the duties of a broker it is usually just every day procedure in listing properties because people will call you to let you know they want to sell

their property. So it is your duty to go out and appraise the property as to what you think it will bring on today's market. You put the price on it and therefore have it listed at that price and try to negotiate a sale.

Q. Will you state whether or not you are on the approved list for the Veterans Administration?

A. I am a compliance inspector for Akin County, South Carolina, for the Veterans Administration.

Q. What duties do you perform as a compliance inspector?

A. Well, a compliance inspector's job is to see that the individual builder constructs a house in the manner that the plans and specifications call for. That is usually taken in stages, whereas the proper footing is installed; the proper foundation walls, whether it is a four inch or eight inch brick wall; the pillars are all of timbers; and everything conform with your specifications and also your plans, and also the quality of the material.

Q. Generally speaking, your job is the same as that to which Mr. Mulherin testified to? You heard his testimony?

A. That is correct.

Q. Now in the interest of trying to save time, you heard me go into great detail as to his knowledge of Augusta. Did you hear that testimony?

Mr. Wolff:

Generally speaking, does your familiarity go as far as Mr. Mulherin's?

The Witness:

Yes. I have been in the real estate business since 1937. Of course you have to be familiar with the property in the surrounding area.

By Mr. Cushman:

Q. You are familiar with just about all the property with reference to construction in Augusta insofar as areas are concerned?

A. Yes, sir.

Q. Are you familiar with the construction, location, and type of occupant down in the development known as Riverside owned by L. T. Anderson?

A. I am.

Q. What experience have you had in placing money or lending in the Augusta area?

A. Well, I placed F.H.A. and G.I. mortgages for individual buyers through Metropolitan Life Insurance Company, some through Prudential, and also with our local lending institution in Augusta, First Federal Savings & Loan Association.

Q. How long have you been engaged in that type of business?

A. Well, I would say since 1950.

Q. Since 1950?

A. Yes.

Q. All right, sir. Now will you indicate generally what degree of familiarity you have with reference to the development known as Riverside?

A. I am pretty familiar with it.

Q. And from whence did you gain this familiarity?

A. Well, it could not help but be noticed. In our business we are interested in any building and all building that is going on because it is our duty, if we want to survive, to contact the individual builders, contractors, and so forth in order to list their property to see if we can sell it. It is general business procedure.

Q. Again in the interest of saving time, you heard the testimony with reference to Riverside, did you not?

A. Yes, sir.

Q. Are you prepared under oath to corroborate Mr. Mulherin's testimony?

A. I am.

Q. And in your observation, generally speaking that is the way the property was?

A. Yes, sir.

Q. Was it good construction or bad construction?

A. I would say that it was very poor construction.

Q. What experience have you had, if any, Mr. Burchhalter, with reference to the sale of security deeds and mortgages?

A. Well, naturally I have been confronted with it and have handled sales and deeds and all the general procedures that go along with real estate since 1937.

Q. Based on your experience and observation, is it your opinion that any lender would be interested in having mortgages in the Riverside sub-division?

Mr. Wolff:

I object, Your Honor. I do not think the witness is qualified.

Mr. Cushman:

I do not think the question is leading. I think he is qualified.

The Court:

Recount what his qualifications are.

Mr. Cushman:

He is testifying based on his observation of Mr. Anderson's property and placing mortgage money.

The Court:

How did he place them? I have forgotten.

Mr. Cushman:

He said he was a representative, had participated in lending institutions in the placing of Veterans Administration and F.H.A., the Metropolitan Life money, First Federal money, and the lending institutions there in Augusta that he had placed loans with.

The Court:

That is 1951?

Mr. Cushman:

Yes sir; 1951 on.

The Court:

I am not sure that qualified him to talk about the situation. What is your question?

Mr. Cushman:

From 1941 to 1948, if Your Honor please, I think that if a man knows the mortgage market, there have been no significant changes during that time.

Mr. Wolff:

That is up to him to testify, Your Honor.

The Court:

I think perhaps you better develop that. I do not know whether your time 1941 to 1948, whether this witness can testify as to what it was. At least you can ask him if he knows.

By Mr. Cushman:

Q. Do you know anything about the placing of mortgage money from 1941 to 1948?

A. Yes.

Q. What do you know?

A. As a real estate salesman you have a lot of other duties other than just selling a piece of property. Your duties are primarily the same as a broker a broker heads up the organization. Of course he is responsible for all salesmen. To become a broker you have to go through a training period of one year and be familiar enough with all these items to withstand an examination in Atlanta and pass. If you are not familiar, naturally you fail your examination.

Now if I might say so, I have been dealing in handling individual loans, which was the case back in those days. The F.H.A. and V.A. was not in existence. Most of the property we sold in those days was a matter of finding someone who had money who would be interested in lending their money to someone who wanted to purchase. It usually worked on a 50 to 60 per cent basis of the appraised or approved valuation. I am experienced in that from the time, well, I would say from 1938 on. I think any real estate man will tell you that that is the way we sold property in those days, by trying to get individuals to lend money on property.

Q. Were you familiar with the construction down in Riverside during the years 1941 through 1948?

A. Yes, sir, I was familiar with it.

Q. All right. Based on your experience in getting individual loans and based on your observation of the Riverside property, will you give us your opinion as to whether or not a lender would be interested in taking a mortgage on that property down there?

The Court:

Just a minute. You say "a lender." You mean the ordinary commercial lenders, do you not?

Mr. Cushman:

Yes, sir. I said a lender, sir. I do not say any lender.

The Court:

I thought the question you asked the previous witness was the ordinary lenders of money.

Mr. Cushman:

Yes, sir. I think—

The Court:

I do not know that anyone can say there would be no lender anywhere. Would you care to rephrase your question?

Mr. Cushman:

Yes, sir.

By Mr. Cushman:

Q. Based on your experience in placing individual mortgage loans and based on your observation of the Anderson property in the period in question, will you state in your opinion whether or not the ordinary lenders of money would be interested in placing mortgage loans on that property down there?

A. By that do you mean a sufficient amount that it would make it attractive to the purchaser to buy or just a small amount of money or—

Q. Actually what I think we have in mind is whether it would make it attractive for a purchaser to buy.

A. I will put it this way: For this particular type of property or sub-division or any other property in our general area, it would be awful hard to get anyone to lend on the type of property. I would say that it would be awfully hard.

Q. Now would you state whether or not, again based on your experience and observation—give us your opinion—the papers which Anderson took would have a ready market for resale?

A. I would say that it would not. They would not be attractive. I do not know of any approved mortgagee or individual who is lending money who would be interested in any paper on that type of property.

Mr. Wolff:

Objection, Your Honor, and a motion to strike. I think in that particular question the witness has not been qualified to answer that. It seems to me we are back into the mortgage money or lending, and the witness has testified he has only done that since 1950, 1951, somewhere in there.

Mr. Cushman:

I do not believe that is quite accurate. I think the witness testified that he did a great deal of placing individual loans from 1938 on.

The Court:

There are really two questions here as I see it. You can answer one way as to whether the loans would be placed in such a fashion as to make it attractive to the buyer. Now this last question, you asked as to the question of any paper that any seller had received; that is, whether there would be a market for that. I am not sure that the witness has qualified

himself to answer that question. Has he dealt in mortgage paper?

Mr. Cushman:

I believe the record will show that I asked Mr. Burchhalter if he had any experience in the sale or acquisition or disposal—I did not use those exact words—and he said he had some extensive experience in that.

The Court:

Could we ask the witness again what his qualifications are?

By Mr. Cushman:

Q. What are your qualifications? What do you know about that?

A. It might be that I was confused on that issue. Will you ask the question again?

Q. What experience, if any, have you had prior to 1948 with reference to the sale of mortgages?

A. Well, I cannot say that I actually handled any sales of mortgages at that time. I was instrumental in placing mortgages, but I didn't actually—I was not in the mortgage selling business. That is a business within itself. I had no experience in actual selling. What I meant to convey was that the type of structure, no matter where it is, no approved mortgagee or lending institution would be interested in the first place because it is not built to meet any minimum property standard requirements; either the Veterans Administration, the F.H.A., or our local lending institutions.

Mr. Cushman:

How about giving us a five minute recess, Judge?

The Court:

We will recess for five minutes.

(Whereupon, a short recess was taken.)

By Mr. Cushman:

Q. Mr. Burchhalter, are you familiar with the property at Brookside Avenue, North Augusta?

A. Yes, sir.

Q. The property of Mr. Anderson on the road which runs from Belvedere to Clear Water?

A. Yes, sir.

Q. Mr. Burchhalter, directing your attention to the year 1947, and with particular reference to the property located on the Sand Bar Ferry Road, are you familiar with that property there, the type of construction and so on?

A. Yes, sir.

Q. Directing your attention to the year 1947—338 Sand Bar Ferry Road, do you know where that is?

A. Yes, sir.

Q. Assuming those premises sold for approximately $4,000 and that in that sale a security deed was received by Mr. Anderson for $3,500, will you give us your opinion as to the value of the property with reference to the amount of the security deed?

Mr. Wolff:

Objection, Your Honor. I think he can give his opinion if he can qualify with respect to the value of the property, but I don't believe—the way he has it tied in with the security deed it is improper. The witness is not qualified to answer the question.

Mr. Cushman:

Your Honor, I am forced to disagree with my friend. The witness has testified of his knowledge of the property in question. We have simply said, with reference to that security deed, what is your opinion of the value of the property? The security deed is for a certain amount.

The Court:

Are you asking the value?

Mr. Cushman:

The property, not the security deed. The value of the property, whether it was more or less or the same.

I think the witness can answer that.

Mr. Wolff:

Your Honor, the witness has stated he had no experience with respect to security deeds in 1947.

The Court:

We are not asking about the value of the security deed, we are asking about the value of the property on some assumption, I believe, as to what was paid for it.

No, sir. Actually, there we have not got around to agreeing on all the sales prices, but we are approximately in agreement. At this time I have no choice but to say, assuming this property sold for approximately $4,000, which in 1947 and at that time the security deed in the amount of $3,500 was received by Mr. Anderson—that is, the mortgage—what in your opinion is the value of the property sold with reference to the face value of the security deed? He is

not passing on the value of the security deed or anything else. He is fixing a value of the property standing back of the security deed.

The Court:
I think the witness is qualified to testify as to the value of such properties in 1947, the real property itself.

Mr. Cushman:
Yes, sir. That is correct, sir.

The Court:
Do you have anything further to say, Mr. Wolff?

Mr. Wolff:
One moment, Your Honor.
No further objection, Your Honor.

By Mr. Cushman:
Q. All right. Now I will try to rephrase the question to bring you back into the picture. Directing your attention to the year 1947, assuming that the 338 Sand Bar Ferry Road property were sold for the sales price of approximately $4,000, and out of that transaction Mr. Anderson received a security deed in the amount of $3,500, what in your opinion is the value of the real estate with reference to the face amount of the security deed?
A. I would say the value of the real estate at that particular time, realizing the fact it had no plumbing and no bath facilities, that that type of property in any similar location from the standpoint of the seller would have been a very good sale at $2,000.

Q. In other words, the value of the property was $2,000?

A. Yes, sir.

Q. All right. Now keeping your attention at the year 1947, with particular reference to the property 424 Orange Street, assuming that that property was sold for $6,000 and a security deed was taken back by Mr. Anderson in the face amount of $6,306.50, what in your opinion would be the value of the real estate with reference to the face amount of the security deed?

A. My recollection of this piece of property, if my recollection serves me correctly, is that it has another room more than the one that was just discussed. That would be worth $2,500.

Q. Now keeping your attention in the year 1947 and with particular reference to the properties 334-36 Sand Bar Ferry Road, assuming that that property sold for approximately $5,700 and a security deed for $5,700 was received at the time of the transaction, what in your opinion is the value of the real estate itself?

A. May I ask this question: Is that a duplex?

Q. Yes, sir.

Mr. Wolff:

Your Honor, he is not familiar with the premises, it seems to me. He knows nothing about that piece of property.

The Court:

I think he said he is familiar with the general property in the neighborhood.

The fact that it is a duplex, does that recall the property to you?

I was 90 per cent sure it was a duplex

By Mr. Cushman:

Q. All right, sir. Give us your opinion as to the value of that property in 1947.

A. It sold for $5,700 and got a security deed back for $5,700?

Q. Yes.

A. That property is what we would normally call a shotgun type house, having three rooms on each side, one right after the other. For that type property, $2,250 to $2,500 would be a very fair price.

Q. All right. Similar property, same location, with particular reference to the premises known as 410 Sand Bar Ferry Road, assuming those premises sold for $4,000 and a security deed for $3,700 was received by Mr. Anderson, what is your opinion as to the value of that particular piece of property?

A. I would say that particular piece of property would be $1,800 to $2,000.

The Court:

May I ask a question. When you say that that is the value, do you mean for cash, a person willing to pay cash?

The Witness:

Well, that would be the value of the property.

The Court:

I recall to you this last one sold for $5,700 but there was no down payment. You paid on terms, I understand. Now in a certain sense that establishes the value of the property. Now what do you mean when you say that despite that sort of sale it is worth $2,000? You must mean for cash, do you not?

The Witness:

No, sir, I would not say that. Of course it is true that in some cases people buy terms—I mean how much down, how much a month—and it does not make a lot of difference. But this is on a market basis where you are dealing with a person who is a business type person who is buying something in a business-like manner. Now could I add something to that, Judge?

My reason for basing that is this: At the same time, the same years, it so happened I was a salesman in a very nice location—not the nicest, but a very nice location. The company at that time was constructing five-room houses with hard wood floors, some of them plaster walls, but they were conventional houses built properly and were financed by the F.H.A. We were at that time selling that house for $2,000 to $3,000 in that very year.

Mr. Cushman:

No further questions, Your Honor?

The Court:

I have no further questions.

Mr. Cushman:

That is what I meant.

By Mr. Cushman:

Q. Again the same year, 1947, with reference to the premises known as 424-26 Sand Bar Ferry Road, assuming that those premises sold for $3,855 and that a security deed for $1,925 was taken, what in your opinion was the value of that particular piece of real estate during that year?

A. I would say that that property would be worth $2,000.

Q. All right, sir. Same year, 1947, directing your attention to Orange Street in the Riverside subdivision—you know where that is?

A. Yes, sir.

Q. —the premises known as 417 Orange Street, assuming those sold for $5,000 and a security deed was received in the amount of $4,600, what in your opinion was the value of those premises with reference to the face amount of the security deed?

A. What was the number?

Q. 417 Orange Street.

A. All the properties are very similar. This is the same property right on. Twenty-five hundred dollars would be tops for it.

Q. In the interest of saving time, you have stated that all of this property is similar?

A. That is right, at that time. I would say not now because there have been improvements made on it.

Q. Since 1947 and 1948, in there, it was similar property?

A. That is right.

Q. Based on your experience and observation of the property at that time, could you give a general outside limit as to what you think that real estate was worth down there, generally speaking?

A. I think I could sum that up in just what I asked permission to tell the Court a few minutes ago, that values are arrived at by existing conditions. At that time we were selling homes in a nicer location for $2,000 to $2,500. There was an entirely different type of structure. The type of structure was naturally different because it was approved by the F.H.A. and we built in the proper manner. So these properties here were very sub-standard.

Q. Then it is your opinion that the value of the property could not have exceeded $2,000 or $2,500?

A. No, sir; absolutely not.

Q. Well, would you say it was $2,000 to $2,500 or less?

A. The only way I can put that is this: that if you should find a party who wanted that particular location—which of course in a lot of cases was terms, not value—that they would probably be willing to pay $2,000 to $2,500 for that particular type of houses.

Q. Do you know whether or not any of RAR appraised on Mr. Anderson's sub-division?

A. They could not be appraised, would not pass the minimum property requirements. From the outset you would lose time by submitting it.

Q. Now these years 1945, 1946, 1947, and 1948, is your answer which you have just given that they could not qualify during those years? Is that your answer?

A. That is what years?

Q. 1945, 1946, 1947, and 1948.

A. On F.H.A.?

Q. Yes.

A. From my knowledge of the general real estate business and the type of structure, I would say that no F.H.A. loan could have been obtained on it.

Q. Do you know where Cooper Street is?

A. Yes, sir.

Q. Directing your attention to the year 1947 in the general locality on Cooper Street, 1348 to 1354, with specific reference to 1352 Cooper Street, assuming those premises were sold in 1947 for $1,000 and a $900 security deed was taken back, what in your opinion was the value of that property with reference to the security deed?

A. Will you give me those numbers again?

Q. Well, 1352 Cooper Street is the one, specifically speaking. The sales price was $1,000 and the security deed taken back was $900. What in your opinion was the value of 1352 Cooper Street in 1947?

A. Those houses there are pretty sub-standard themselves. They have quite a bit of age on them. The general house in that area, they are rented to our good middle class of people. I can answer this way: I know the house from the outside; I have passed it. I never had an occasion to try to sell it, but I have sold property in there. It appears to be the same type of property from the outside which I have sold for anywhere from $750 to $1,000.

Q. And the same situation would apply to 1348, 1352, 1353, and 1354 Cooper Street?

A. That is right.

Q. Same general type of property?

A. The old properties built on very small lots, no driveways that I know of, probably three feet apart.

Q. And that general property on Cooper Street is worth $750 to perhaps $1,000?

A. At that time.

Q. In 1947?

A. Yes, sir.

Q. Now does your valuation of the Riverside properties on Orange Street, Colorado Street, and Sand Bar Ferry Road—is that about the same for 1948, 1945, and 1946, also?

A. Yes, sir.

Q. Could you fix a general valuation of the property over on the Clear Water Road there between Belvedere and Clear Water? Do you know about Mr. Anderson's buildings over there?

A. Yes, sir, I am familiar with them from traveling that way and handling other properties in the adjacent areas. What years are we referring to?

Q. With particular reference to the year 1945, sir, 1946, and 1947.

A. You want to know what in my opinion was the value at that time, 1945?

Q. Yes, sir, generally speaking, with reference to that property over there.

A. The type of property being of course quite a ways out from the city would be classed—well, almost country property. Fifteen hundred to eighteen hundred dollars would cover that type of house. Some of them have an extra room. Most have three rooms, and maybe one or two had four rooms. They were frame houses with sheeting and just flooring, no sub-flooring, and built on pillars. That type of structure.

Q. About $1,500 to perhaps $1,800?

A. Yes, sir. And they had no plumbing. They had a hand pump in the yard.

Q. Now directing your attention to the year 1947, with particular reference to the Brookside property, the premises 517 Brookside Avenue—I believe it is Brookside Avenue, is it not?

A. I believe it is changed to Cliffton Avenue now.

Q. It was Brookside at one time, in 1946?

A. Yes, sir.

Q. Do you know where 516 Brookside Avenue is?

A. Yes, sir.

Q. Assuming that property was sold in 1946 for approximately $3,650 and the security deed come back in the amount of $2,200, what is your opinion as to what was the value of the real estate?

A. This was what year?

Q. 1946.

A. Twenty-five hundred dollars.

Q. All right, sir. With particular reference to 1946 in the premises 519-521 Brookside Avenue, assume that those premises sold for $5,250 in 1946 and a security deed was taken back for $4,365.81. What in your opinion was the value of the property?

A. The property at that time was a duplex, having three rooms on each side. And I am 90 per cent sure that I am right that it had only one bath which was used by both sides. That type of property at that time would be about the same value as a duplex, $2,500. It is not a home.

Q. About $2,500 in 1946?

A. Yes, sir. That is right, sir.

Q. Do you know where Chaffe Avenue is in Augusta?

A. Yes, sir.

Q. Know where 822 Chaffe Avenue is, approximately?

A. Yes, sir.

Q. You know?

A. Yes, sir.

Q. During the year 1942 now, assuming that that property sold for $2,500 with a security deed back in the amount of $1,000, what in your opinion would be the value of that property in 1942?

Mr. Wolff:

Your Honor, I think in 1942 this witness had only been in the real estate business as a real estate salesman, and at this point I do not know if he is qualified to testify as to what the values were at that time, unless he is qualified by a further question.

Mr. Cushman:

He had been in the business about five years, if Your Honor please; made his living there.

The Court:

Had you dealt in properties in that neighborhood during that five-year period?

The Witness:

Yes, sir. It was our duty as salesmen to make our own appraisals independently. We would hold a meeting and in that way the whole organization would arrive at a fair market value.

The Court:

You feel you are qualified to answer?

The Witness:

Yes, sir. That was part of our duties.

The Court:

Objection overruled.

By Mr. Cushman:

Q. Assuming that property sold for $2,500 with a security deed of $1,000, what in your opinion was the value of that property?

A. That particular location was a little better due to proximity to schools, transportation, and shopping. That property would have been worth at that time, compared to the other property selling in the same neighborhood, $2,500 to $2,750.

Q All right, sir. Do you know where Tuttle Street is in Augusta? 520 Tuttle Street?

A. 520 Tuttle Street, yes, sir.

Q. Assuming that the premises known as 520 Tuttle Street were sold in 1944 for $2,000 with a security deed back for $1,960, what in your opinion was the value of the Tuttle Street property in 1944 with reference to the security deed?

A. Well, that is one of our you might say not exactly sub-standard neighborhoods. The majority of those houses have quite a bit of age. Compared to the similar properties that I have sold in the same location, I would say $2,000 would be the price, sir.

Q. Do you know where Calhoun Street is?

A. Yes, sir. Calhoun is quite a long street. What section do you have reference to?

Q. 549 Calhoun Street.

A. Downtown Augusta.

Q. With reference to 549 Calhoun Street, assuming that property was sold in 1945 for approximately $1,500 with a security deed back in the amount of $950.60, what in your opinion was the value of that property in 1945?

A. That particular part of Calhoun Street, at that time that type of property was selling for $1,000.

Q. All right, sir. Mr. Burchhalter, one last question. There is some evidence here relating to the sale of property on Emmet Street in the eleven hundred block of Emmet Street. Assuming that that property in that general neighborhood sold for $2,500 in 1945—Let's take 1111 Emmet Street. Assuming that sold for $2,500 and the security deed was for $2,100, what in your opinion was the general value of that property on Emmet Street for that particular piece of property in 1945?

A. Of course I am familiar with the property in that particular block. Similar property in there has been sold for—this was in 1945?

Q. Yes.

A. I sold similar property in there to individuals for $1,500 to $1,750.

Mr. Cushman:

No further questions, if it please the Court.

Cross Examination.

By Mr. Wolff:

Q. When were you born, sir?

A. 1912, March 2.

Q. Where were you educated, Mr. Burchhalter?

A. North Augusta grammar and high school.

Q. Did you attend any college or university?

A. No.

Q. When did you finish high school?

A. 1930.

Q. What did you do from 1930 to 1937?

A. From 1930 to 1937, it was a very bad time. I got out of school and went to work with the A & P Company as a clerk. From 1930 to 1932 I stopped and took a business course at a business school in Augusta. Then I went to work for the gas company which is now known as the Atlanta Gas & Light Company. I stayed there about a year. Then I went with the Citizens & Southern National bank and stayed there from 1933 to 1936. I think I worked to 1937.

Q. What did you do with the C & S bank?

A. I worked in the Transit Department as a bookkeeper in the bank. I went up to individual bookkeeper and then worked as a bank bookkeeper on the bank's accounts.

Q. You were with them until 1946?

A. I became ill at that time and did very little but more or less recuperate until October of 1937. I went into the real estate business upon passing an examination with Sherman & Hemstreet in Augusta.

Q. What type of examination?

A. What type of examination?

Q. Yes, sir.

A. It is a regular salesman examination. It is compiled by the Georgia Real Estate Commission. Each salesman has to stand this examination in Atlanta. It is a written examination.

Q. Is that an examination you have to stand before you can ever sell a piece of real estate as a sale?

A. That is correct, in the State of Georgia.

Q. You have to have no prior experience to take that examination?

A. No, you do not.

Q. Did you sell any property prior to 1937?

A. Did I sell any prior to 1937?

Q. Yes, sir.

A. No, not working with the bank and so forth. I did not sell any property.

Q. Did you have any construction experience prior to 1937?

A. No.

Q. I believe you stated you constructed some fifty houses.

A. That is right.

Q. When were they constructed?

A. They were constructed from the period of 19— let me think a second. From 1952 to the present time.

Q. The first house you built was in 1952?

A. Yes.

Q. Let's go back to 1937 when you took the examination and passed the real estate examination. You went to work as a salesman in Augusta?

A. That is right.

Q. Selling real estate?

A. That is right.

Q. Will you tell us the experience you had as a real estate salesman commencing in 1937, the type of properties you handled, the type of sales?

A. Well the type of property was residential property for the most part, some business property and investment property—investment property meaning a lower class of property you sell to an investor or rental property.

Q. You were ill in 1936. Did that affect your activities as a real estate salesman?

A. No. Would you like for me to elaborate on it?

Q. On your illness?

A. Yes.

Q. No. Do you have any idea of residential houses sold year by year?

A. Year by year from when?

Q. Starting in October of 1937 when you went into the real estate business.

A. For each year?

Q. Yes, sir; approximately.

A. It would be a little hard. I would have to get a lot of records on that. The best way I can sum it up is that I was fairly successful. I have owned my own business for the last four years.

Q. That is as a broker, I understand.

A. Yes, sir, but you have to start as a salesman. I have been in my own business since 1952.

Q. All right. Let's go back to 1937. Commencing in 1937, about how many houses were you selling in 1937, 1938, and 1939?

A. That question is a little hard. We did not usually count them as houses. We counted ours mostly in commission. I would say that our average at that time—

Q. You say your average?

A. Well, commission average as a salesman in real estate in our locality would be four to six pieces of property a month at that particular time.

Q. That included investment property; includes industrial property, I believe you said.

A. Yes, sir.

Mr. Cushman:

He said industrial property.

By Mr. Wolff:

Q. Did you mention investment property?

A. I did.

Q. You mentioned three types of residential—would you say those again?

A. Residential property; investment property; and commercial property, meaning filling stations, grocery stores, and the like.

Q. During the period 1937 to 1952 you went into business for yourself. Did you work for the same real estate company?

A. No.

Q. Would you tell us the company you worked for?

A. I worked for Sherman & Hemstreet.

Q. For what years, what period?

A. From 1937 to 1941. Then I went to Georgia. I went to work with the Atlanta Realty Service in Daytona Beach, Florida. I came back from Florida in 1948, I believe it was.

Q. You were not in Augusta from the period 1941 to 1949?

A. Well, yes, I was in Augusta.

Q. You were not working there, you were working in Florida during that period.

A. Let me think a little bit. I cannot remember the exact year I came back, but I went to work as sales manager. It was either during the year 1947 or—

Q. As I understand your testimony, you sold property at 1111 Emmet Street in 1945.

A. No, I said that property had been sold there. I think the question was what was the valuation of it at that time.

Q. I know, but you volunteered the information. I thought that you sold similar property in the neighborhood.

A. No. I think if you check the record you will see I didn't sell it at that time, but property was sold in the neighborhood at that time.

Q. During 1937 to 1941, when you were working in Augusta, who set the price on the houses?

A. On which houses?

Q. On regular residential houses which were sold, how were the prices arrived at?

A. The present market would determine that.

Q. The present market, the factors which determine the present markets. Did you say those factors went into force in 1937?

A. Do you mean how did we arrive at what a piece of property should be appraised?

Q. You were not appraising property.

A. It was our duty.

Q. Who is "our" duty?

A. All the salesmen with the organization, along with the owners and the brokers to make individual

appraisals of each piece of property. That is the way we arrived at the value of the property. The way we did that was by experience and comparison to similar properties in similar neighborhoods.

Q. Why did you leave Augusta in 1941?

A. Why did I leave Augusta in 1941?

Q. Yes, sir.

A. Does that have any bearing on the case?

Q. I will determine that and the Court can determine that.

A. Well, during 1941 for a period of time I was in Air Corps Engineering.

Q. You were in the Army?

A. There was a war situation. No, I was not in the Army.

Q. You were with the Air Force Engineers?

A. Air Corps Engineers.

Q. When you returned in 1948 the values of property had increased substantially from the time you left in 1941, had they not?

A. Well, I would not say greatly.

Q. Are you saying that the values in 1941 were about the same as they were in 1948?

A. Maybe I could answer it in this way: About 1948 or 1947, of course you had to obtain priorities in order to build anyting, if you remember. It is true that some properties probably did sell for more due to the situation that existed at that time. But I would not say from the value standpoint that they were enhanced a great deal.

Q. You were not in the real estate business from 1941 to 1948, were you?

A. Not actively, no. I was not selling and so forth.

Q. What do you mean "actively"?

A. Well, I had interest in real estate.

Q. You were not selling, did you say?

A. No, I could not sell real estate.

Q. How much real estate did you have?

A. Well at that particular time I owned a home and some vacant property.

Q. How much vacant property?

A. Well since then it has been sub-divided into fifteen lots.

Q. It was acreage at that time?

A. That is right.

Q. How far out from Augusta, where is that property?

A. Half of it is in the city limits of North Augusta.

Q. South Carolina?

A. Yes, sir.

Q. How far is that from Augusta, Georgia?

A. Just across the Savannah River. Across the river.

Q. Generally when you make an appraisal, what factors do you take into consideration?

A. You take into consideration land value.

Q. Arrived at in what manner?

A. Arrived at at so many dollars per front foot, depending upon the area it is in, by your surrounding properties which determine the value of any properties. Then you take into consideration the type of material and the manner in which it is constructed, and in that way you arrive at your valuation.

Q. Is that all you take into consideration?

A. Well, no, not all. It takes you quite a while to expound on that because there are many types of materials and many grades of materials.

Q. That is materials now?

A. That is right.

Q. Outside of material, is that all—the other land values and the manner constructed the only other factors?

A. Are you speaking of just one specific piece of property in a location?

Q. I am speaking generally.

A. Well, I think I answered that in saying any piece of property will cost so much plus square foot to build, depending upon the type of material used. The land value is determined by what the surrounding areas are, whether you are in a location where across the street you have houses in a $10,000 bracket, on adjacent lots, or whether you are surrounded by $6,000 houses. That tends to establish part of your valuation.

Q. You take into consideration construction costs, also, then?

A. Absolutely.

Q. In arriving at a value?

A. That is right, sir.

Q. Did you consider sales prices in arriving at a value?

A. To consider what?

Q. Sales prices in arriving at a value.

A. You have to arrive at your value before you have your sales price.

Q. How about sales prices of adjacent property?

A. That has a bearing on it, but then sometimes it will vary. I will say this: that is all properties are sold—well, for instance, on a subdivision if your properties are sold with values corresponding to the next property, then of course most of your properties are of the same value. However, if it is in a location like I got back to just a while ago, it depends on what is next door and what is adjacent across the street.

If it has no restriction on it, it has a direct bearing on your value.

Q. If you take a piece of property in a block area, say, having six houses, all houses have similar construction, or seven houses, all houses having similar or about the same type construction, constructed by the same individual, same sized lots, and the house in the middle sold for $2,000, would that have any bearing on the value of the house next door?

A. It would have a bearing on it if that happened to have been a fair market price for that house and had not been a distress sale or something. When we take a hypothetical case, in some cases a party will have to sell a piece of property for less sometimes than the valuation. That does not mean your house is the same as mine because I had to sell it. But if it sold for $2,000 and there was a market value for that particular type of property in that location, that would be a key to valuation.

Q. If you purchased a piece of property—take this same block with seven houses, ignoring the fact of distress sale—and sold one piece of property for $2,000, sold one year later for $2,000, would that not be an indication of value?

A. Well, I don't exactly get what you mean there. Would you please ask the question again?

Q. Take a piece of property that sells for $2,000 one year and for $2,000 the following year. Isn't that an indication of extended market value?

A. The same piece of property selling for the same amount for the next year?

Q. Yes.

A. I would say that it would be an indication if that were still the fair market value of that property.

Q. In other words, you do not consider comparative sales in determining fair market value?

A. That is right. In this hypothetical case you mean if everything has remained the same, no changes have been made in any of the properties to enhance it or decrease the valuation?

Q. That is right.

A. It is a little hard to answer that. It also depends on the economic condition, what your housing situation is for that particular type of house.

Q. It seems to me you do or do not take into consideration sales prices.

A. Sales prices will vary from time to time, there is no doubt about it. We all remember that. I have sold many houses recently that I sold once for $5,000 that sold for $15,000.

Q. What did you mean by a distress sale when you suggested that maybe some of these houses would sell for a distress sale?

A. Well by reason of the death of the head of the family whereby there was not sufficient insurance and so forth. Just strictly distress; they have to sell in order to raise money.

Q. That tends to reduce the selling price?

A. Oh, naturally. That is just like—

Q. Does it tend to reduce the value?

A. No. When I spoke of a distress sale, I meant just that. As if I would take a third less for my car to get cash money or a third less for my house in order to accomplish something else.

Q. Is the value of your car in this distress sale worth any less after you have sold it?

A. No.

Q. Are you a registered appraiser of any kind?

A. A registered appraiser?

Q. Yes.

A. No, I am not a registered appraiser. Appraising goes with our business. We are qualified by the Georgia Real Estate Commission.

Q. But you are not registered in any manner as an appraiser?

A. I have a license to appraise, list property, sell property, build property, negotiate for loans and appraise loans, and handle property in general in a real estate manner.

Q. That is your real estate broker's license you are talking about?

A. Yes, sir.

Q. Is there an association, American Institute of Appraisers?

A. Oh, yes, there is.

Q. Do you belong to that association?

A. No.

Q. What is your definition of fair market value?

A. Fair market value?

Q. Yes, sir.

A. Fair market value would be, I think, just as the term implies; it is fair for the buyer and fair for the seller.

Q. In other words, if a piece of property sells for $5,000 and the buyer considers it fair and the seller considers it fair, that is the fair market value?

A. That is right.

Q. Do you consider the earnings of a property in your factor of entering into fair market value?

A. Do you mean by that from a standpoint of rental?

Q. That is right.

A. Generally speaking, in selling investment property that is the determinant factor.

Q. How about residential properties?

A. Well, residential property is usually lived in.

Q. Rented, too, aren't they?

A. Well in rental property classed as rental property, if it is a residential home you may be living there. And you put it on the market; you want a larger house or something like that. If you will define it a little further, I will try to help more. Rental property in a category is strictly rental property; it is not the type property you would use as a home.

Q. That is not entered into in your consideration of determining the value of residential property?

A. I didn't understand.

Q. The rental amount does not enter into your consideration of rental of residential property?

A. That is just a little off the beaten path because I cannot help but go back to the fact that there are two types of property. A property used as your home. Now if you use it as your home and rent it, you might class it as rental property, but not in the sense of the word that it is forever rented as rental property.

Rental property is usually built with the fair return to the amount of money that is expended and not built in the type of—I venture to say if you build your own home and you try to rent it, then you cannot get as fair a return on it because you put the material in there that you want and—

Q. What you are saying, if you build your own house you add a few extra luxuries?

A. And you build in a more substantial manner. There are rental properties that are substantial, but you just do not go to the expense if you want to make any return off of it.

Q. You stated you were compliance inspector with the Veterans Administration.

A. For South Carolina, Akin County.

Q. When did you become a compliance inspector?

A. Well, I have my little proclamation or whatever you want to call it. I do not remember the exact month, but approximately six months ago.

Q. Compliance inspector has to do with new construction, does it not?

A. That is correct.

Q. To determine whether or not the house is being built in accordance with specifications?

A. That is right. You have the minimum property requirements. That is more or less a bible you go by, and then you have the individual sets of plans and specifications on that particular house.

Q. That has nothing to do with the appraisal property, does it?

A. No. The inspection end and appraisal end are different.

Q. Entirely different, are they not?

A. That is right. May I make a statement that might clear this up?

Q. Not right now, just a minute.

A. All right.

Mr. Cushman:

Your Honor—

The Court:

Is it with regard to the last question?

The Witness:

Yes. I just wanted to mention this. We can substantiate it with the Veterans Administration right here in Columbia. I was put on the approval list as an appraiser and asked that I not be made an appraiser because I operate my own business and it is

too time-consuming to be an inspector and an appraiser, also.

Mr. Wolff:
That is a conclusion, Your Honor, and I move the statement be stricken from the record.

Mr. Cushman:
He got into it.

Mr. Wolff:
I didn't get into it; he volunteered.

The Court:
What was the question, whether there was a difference between being a compliance inspector—that was the question, was it not?

Mr. Wolff:
When he stated he was a compliance inspector, I asked him did that have anything to do with appraising and he said no, that the two were entirely different. Now that was the general trend.

Mr. Cushman:
He said he was appointed as an appraiser and it was too time-consuming, and he was made a compliance inspector.

The Witness:
I asked to be relieved of it and not be given the cases.

By Mr. Wolff:
Q. Have you ever appraised any properties for the Veterans Administration?

A. Along the same line, I am the property manager for the Veterans Administration for all foreclosed properties in Akin County, South Carolina. In that capacity it is my duty, which I get paid for, to periodically appraise the property and give my opinion of the valuation that it can be sold for on the present market.

Q. You have been doing that since 1954?

A. I have been doing that since 1953, I believe; approximately two years.

Q. With respect to the Sand Bar Ferry Road property, as I understand that is the Riverside subdivision.

A. That is what it is known as.

Q. Mr. Mulherin testified that it was poor construction and gave reasons why it was poor construction; namely, that he had inspected the property. And you agreed that the property was poor construction, is that not right?

A. That is correct.

Q. Did you ever inspect the property out at Sand Bar Ferry Road?

A. I have on different occasions. I have inspected it.

Q. Did you climb under the house?

A. No. You cannot very well climb under.

Q. Did you ever look under the house?

A. I have.

Q. What sort of studs are there?

A. Pillars on the outside, about 4 by 4 pillars, big pillars. I have noticed two in particular that had one pillar in the center of the house, and what took the place of the pillars were 2 by 4's in the dirt and were resting against the floor joists.

Q. Did you ever inspect the ceilings or the roof?
A. Yes.
Q. How far apart are the studs or rafters?
A. At least two feet, and they are not consistent.
Q. They are what?
A. I would say two feet or more.
Q. When did you inspect these properties on Sand Bar Ferry Road?
A. You mean when is the first time I had occasion to look at them?
Q. You stated you inspected them, some of them.
A. Well, the first time I inspected them was, I believe, back about 1952 when I was with the Veterans Loan & Realty Company because we had been asked to sell some of the property.
Q. Did you sell any of the property?
A. No, sir.
Q. Do you know the cost of these properties?
A. Do I know the cost of them?
Q. Yes, sir.
A. You mean have I seen it on record? I cannot say that I have done that, no.
Q. Well, I believe you stated that one of the factors in considering the fair market value was the construction cost.
A. That is true.
Q. And the values you gave, you did not consider the construction cost of the specific properties, is that right?
A. No, that is not true. Certain types of construction can be built for so many dollars per square foot.
Q. You gave some general testimony with respect to the Riverside sub-division. What streets does that embrace?

A. One Colorado Avenue, one Orange Street, Sand Bar Ferry Road—just a bunch of cross streets. I cannot say I can call each one of them.

Q. Is there a Virginia Avenue in there?

A. I believe there is a Virginia Avenue.

Q. Is that part of the sub-division?

A. I believe.

Q. You don't know, do you?

A. I would not swear one street is marked Virginia Avenue. It is the type property that you—well, you don't deal in it very much. You are just losing your time.

Q. You are not very familiar with the property?

A. I am absolutely familiar with the property, not only from Mr. Anderson's standpoint, but from other—

Q. But you have never dealt with the property. You don't fool with it.

A. No. It is not very salable.

Q. Do you know some of the other streets out there, the names of them?

A. I think I said Sank Bar Ferry Road, Colorado Street or Avenue, Orange. I think there is one called Virginia. There are about three streets running parallel and four streets running at right angles into the property.

Q. Is there a Chaffe Avenue there?

A. I don't know. I would not say there was a Chaffe. I don't know whether there is or not. There is a Kentucky Avenue on the other side of Augusta, so I don't know if it is duplicated or not.

Q. Is there a Cherry Avenue?

A. I could not rightfully say if there is a Cherry Avenue there or not.

Q. Do you recall your testimony with respect to the property at 517 Brookside, which is now 517 Clifton, I believe?

A. I do.

Q. What did you state that value to be in 1946?

A. Which value?

Q. The value of the property at 517 Cliffton in 1946.

A. 517. I believe if I remember correctly, I think I remember the house. They were all built together. Of course some hour or so ago they were a little clear in my mind. Two thousand to twenty-five hundred, I believe it was.

Q. That house in 1946 sold for $3,650, Mr. Burchhalter. To what do you ascribe the difference between the selling price and the value that you now place on that property?

A. Well, in some cases it is a known fact that people will buy terms. If the down payment is very reasonable and the monthly payments are reasonable, believe it or not, there are some people who do not care whether the total price is $3,000 or $6,000.

Q. I thought I understood you to say that the terms did not make any difference in determining values of property.

A. I don't remember that at all. I think you are mistaken. Terms? No, I don't remember that. I will be glad to answer again if you ask me.

Q. I would like for you to explain more fully exactly what you mean, to what do you ascribe the difference between $3,650 and this $2,000 to $2,500 value that you place on the property in 1946.

A. At that particular time the houses were built—with all due respect to Mr. Anderson, the man is not a builder. That is all I can say. The houses he built

and had built—of course I don't know whether he is building now or not—were all of the same caliber. Apparently there were no experienced carpenters at all to do the work; they have no mortared joints; they do not use what we call trim work, which is commonly known to the layman maybe as Curtis type trim work. Around the doors and windows the trim only consists of two and a half to three inch by three-quarter boards which you would normally use as sub-flooring or decking which comes in four, six, and eight by three-quarters. It is strip lumber.

There is no weather stripping in the houses. The windows are not a modern type of windows. They are the old sash type which the top windows are secured and the bottom window, when you open it you put a stick under it. There are no window weights, no tension type windows. No sub-flooring. That is what we commonly called bungalow pine floor. It was not built with curtain walls, which is an absolute requirement of any building code as far as F.H.A. and the V.A. is concerned.

Q. Excuse me. You are speaking now of what Mr Anderson has built, is that not right?

A. Well, he built these in North Augusta.

Q. Are you familiar with the conditions in Augusta in 1946?

A. Well, I would say so. I was pretty close in touch with Augusta. All my people live there.

Q. How often did you go back?

A. To Augusta in 1946?

Q. Yes.

A. Oh, on the average of once a month.

Q. I don't know that you answered my question as to the reason for the difference between the value you gave the property of $2,000 to $2,500 and the

$3,650 selling price. I am using this as an example.

A. No, I don't believe I answered that. You mean my reason for arriving at that figure?

Q. Any lesser figure than the selling price.

A. That is determined by what the same type of property is selling for in similar neighborhoods or the same neighborhood.

Q. The property on Sand Bar Ferry Road, Mr. Burchhalter, 410 Sand Bar Ferry Road and 418 Sand Bar Ferry Road, are they fairly close to each other?

A. 410 and 418?

Q. Yes, sir.

A. They would be in the same block.

Q. One of them sold for $3,800 and the other one sold for $4,000 in 1947. Would that not be an indication of the value of those houses, similar properties in similar neighborhoods?

A. Not for that type property, no, sir.

Q. Not for that type house?

A. Just as the statement is; jus the type of house, the manner in which it is built, and the location it is in.

Q. Are you familiar wih the property 413 Orange Street?

A. Yes.

Q. Are you familiar with the property at 420 Orange Street?

A. I believe I am.

Q. Do you know whether or not a G.I. loan was given on the sale of those houses?

A. If you mean do I have knowledge by the record or by hearsay or by—

Q. Do you have knowledge of whether or not a G.I. loan was placed on those houses?

A. No. I can put it this way: I do know a G.I. loan was obtained in that location, but I have not—

Q. Did I understand you to say the Veterans Administration would not issue loans on that type property out there?

A. They would not today and a good many years back.

Q. They did in 1946, did they not?

A. I can't answer you that.

Q. They have in the past, have they not?

A. To my recollection there is one G.I. loan. I cannot tell what year because I have not seen it. I have just heard about it in the course of business. There are different situations that altered somewhat from that time to this. If you would like to explain, I think I could clarify myself.

Q. I want to ask you about 413 Orange Street. What value did you place on that property in 1946?

A. That is 413?

Q. That is right.

A. In the condition it was in at that time, no plumbing, no bath facilities, with a pump in the yard—which was true of most of the properties there, they had no water facilities—around $2,000.

Q. 420 Orange Street, what value did you place on that in October of 1946?

A. 420 Orange Street?

Q. Yes, sir.

A. Would it save time by me saying the properties at that time, the condition they were in and all, none of them would have sold for more than $2,500?

Q. If you were told they sold for $6,000, would that change your opinion as to the value?

A. No, sir, it would not; not in the condition they were at that time. Now the houses have been improved, I know that.

Q. Any improvement would have increased the value of the property, would it not?

A. Well naturally, any improvement on property enhances the value if done in the proper manner. That is true.

Q. Of all the houses that you were asked about by Mr. Cushman, how many of them have you inspected personally, Mr. Burchhalter?

A. How many have I personally gone into and looked at the roof and so forth?

Q. Yes, sir.

A. I believe I have gone through more than he even asked about. You mean in this particular location on Sand Bar Ferry Road?

Q. Well, no, all the houses he asked you about—Clear Brook or somewhere, Tuttle, Calhoun, Emmet.

A. When you see one you see all of them. I looked through at least ten houses.

Q. Did I understand you to say mill people rented the property on Sand Bar Ferry Road?

A. No, I didn't say. I was not asked.

Q. Who did rent those properties?

A. I cannot say that I know of anybody's exact vocation who rents the properties.

Q. Who purchased those properties?

A. Who purchased them?

Q. Yes, sir, what type of individuals.

A. Well, I don't know that I am supposed to know that, inasmuch as I have not handled any sales on them. I do know that in looking over one of the properties I learned from one of the individuals that he had formerly worked in construction at DuPont and now he was working at the Veterans Administration Hospital.

Q. Do I understand he is a Government employee?

A. That is what he says.

Q. Did I understand you to say that the property on Cooper Street was rented to mill folks?

A. That is right, strictly a mill village.

Q. The property on Calhoun Street, do I understand that was rented to colored individuals?

A. I can't say that, but that locality has been changed over to colored.

Q. When did it change?

A. It has been quite some time ago, I cannot say exactly. There are some blocks on Calhoun Street that have always been housed by Negroes.

Q. How about the five hundred blocks?

A. The five hundred block of Calhoun Street now to my knowledge, to my last dealings in that section, is pretty well filled with Negroes.

Q. Is it a mixed neighborhood?

A. I think at the present time there are probably a few families there, but most of them have sold and moved out by reason of encroachment.

Q. Did I understand that was near the railroad?

A. I didn't make that statement.

Q. Do you know whether it is?

A. Yes, it is down near the railroad section.

Q. Those properties rented to railroad people?

A. I didn't say that.

Q. I say are they, do you know?

A. No, I would not say they were rented to railroad people. There are some railroad people living down in that part of town on some of the better streets.

Q. But do railroad people own some of those houses?

A. That I would not be able to tell you.

Q. Some live in that neighborhood?

A. There could be, but I don't know of any particular man who works for the railroad who lives there; don't know that much about it.

Q. One of the factors in determining the value of the fair market value of property, Mr. Burchhalter, is one of these factors the type of individual that the house is rented to?

A. Are you speaking of rental value? Please state the question again.

Q. In determining the value of property, is the type of individual who owns the property taken into consideration?

A. The types of individuals living in the adjoining houses or in the neighborhood is taken into consideration, if they are white or if they are colored.

Q. If in a particular neighborhood the individuals living in that neighborhood had more or less similar employment, would that be taken into consideration?

A. Well, that would be a certain classification of your neighborhood and it would have some bearing on the valuation of your property.

Q. If the wages were more or less stable, would that be a factor in your consideration?

A. Well, in some.

Mr. Cushman:

"If the wages were more or less stable, would that be a factor," I don't think that question is proper.

Mr. Wolff:

This man stated he knows the value of property. What does he take into consideration? He gave me first four items. Now he gives me ten.

Mr. Cushman:

You are asking him and he is telling you. I don't think the witness knows that you are saying.

The Court:

Repeat the question as clearly as you can, Mr. Wolff.

By Mr. Wolff:

Q. If in a particular neighborhood the wages were more or less stable, would that be taken into consideration in setting a value on the property?

A. No. That is a long shot. That is not taken into consideration in appraising value of property.

Q. That is what I want to know, it is taken into consideration?

A. The bank president might be satisfied to live next door to me in a house that I am only paying twenty-five dollars a month for, but he could afford a lot better. So that does not enter into appraising.

Q. If a colored person moved next door to your house, would that affect the value of your property?

A. I imagine it would.

Q. What would it do?

A. It would decrease in value inasmuch as you and a lot of other people would not be interested in buying it if I had if for sale.

Q. In other words, that is taken into consideration in determining the value?

A. That is a very misstated way, but you are speaking of appraising in general?

Q. That is right.

A. I have never seen that in any appraisal course and I have taken a few of them.

Q. They are factual considerations rather than theoretical considerations?

A. They are practical; yes, I will agree with you.

Q. They generally would not mention that in a course anyway, would they?

A. I don't imagine they would.

Mr. Cushman:

The Supreme Court says you are not supposed to talk about it at all.

The Witness:

We are not supposed to talk about those.

By Mr. Wolff:

Q. How about the size of some of these lots, Mr. Burchhalter? Are you familiar with the lots on Chaffe Avenue?

A. An average lot on Chaffe Avenue is 50 by 130 to 150, city-sized lots.

Q. How about on Emmet Street?

A. The same thing would apply. Some of them buy an extra half lot, but the average lot would be 50.

Q. How about Sand Bar Ferry Road?

A. The lots on Sand Bar Serry Road, most of the lots were sub-divided, I believe, to 75 by 150 or 150 by 150.

Q. That is all of the lots in Riverside sub-division?

A. That is the general practice in that area.

Q. Where are the Veterans Administration records for the State of Georgia for loans that are issued in Georgia maintained, do you know, Mr. Burchhalter?

A. Where are they maintained?

Q. Yes, sir.

A. You mean as far as the Veterans Administration is concerned?

Mr. Cushman:

I cannot see where that is relevant, where they keep their records.

The Witness:

I am from South Carolina, but the same thing applies. They are right there on top of the hill at 105 Price Street, Northwest, Georgia.

By Mr. Wolff:

Q. The ones for Augusta are kept there?

A. For the State of Georgia.

Mr. Wolff:

Respondent moves that the testimony of this witness be stricken inasmuch as I think it is clearly shown that he is not qualified to testify with respect to the values of these propertes involved

The Court:

The motion will be denied. The evidence will remain in for whatever it is worth.

Mr. Wolff:

That is all, Your Honor.

Mr. Cushman:

May I use about three or five minutes until we can get through with this witness?

The Court:

We are running overtime.

Mr. Cushman:

I am aware of that fact, but I believe we can get through in maybe five minutes.

Re-Direct Examination.

By Mr. Cushman:

Q. Now, Mr. Burchhalter, let us go back here. Mr. Wolff has asked you a great deal about the factors involved in determining the value of real estate. Let me ask you whether or not the desirability of the property with reference to obtaining mortgage loans thereon enters into the valuation of the property.

A. Yes, sir, it does.

Q. To what extent?

A. Well in most cases to the extent that you either get your mortgage money from your approved mortgagees, inasmuch as it is the right approved type of property, or you don't.

Q. Is it not a fact that the question of whether or not a property is eligible to be secured for a mortgage in large measure determines whether or not it can be sold?

A. That is right, sir.

Q. There is no question about the fact that Mr. Anderson's property just was not eligible?

A. No question in my mind, no, sir.

Q. Now you made an interesting statement on cross examination which I would like very much to elaborate on. You said people will buy terms. Mr. Wolff asked you to explain the discrepancy between a $2,500 valuation and a $3,600 sale. I would like for you to explain in detail to the Court, please, what you mean by the fact that people will buy terms and what effect it has, if any, upon any discrepancy which might exist between actual value and the listed selling price.

A. Well, I think I can best sum that up in this manner: that there are some classes of people that want housing. They are not G.I.'s. Their income does not make them eligible from a credit standpoint or individual income standpoint to qualify them for F.H.A. loans. Then those people will definitely buy terms because in a lot of cases it is the best they can do.

What I mean by terms is this: that is the down payment—and we will run into it every day, even in the building. If I can give you an example, I think it might help you. I am building in two different locations. One house is $11,000 and the other is $1 500. The first question is asked me, "How much would it cost me down and how much on my monthly payment?" In a lot of cases before signing a contract I have to tell the individual the total purchase price of the house. Now that happens not only with people that don't qualify, it is just more or less a situation that the times have brought about due to the fact of auomobile financing and other things. It has gotten into the home financing end.

If it is made attractive enough for people that cannot qualify, they are not veterans and so forth, to have a place to live and have reasonable monthly payments, that is what we in our business consider buying terms.

Q. Do you mean by that if the down payment is low enough people won't even ask what the purchase price is?

A. Believe it or not, it is true. It is not very sensible, but it is true.

Q. Do you think those factors would enter into any discrepancies or alleged discrepancies for what Mr.

Anderson was able to get as the listed purchase price of his property?

A. Yes, sir.

Q. As a matter of fact, that is the explanation?

A. In my opinion it is. I have seen various cases like that.

Q. Do I understand you to say if a person needs a house bad enough and the payments are low enough, he pays an ultimately higher purchase price than he would if he pays cash?

A. Yes, sir. If you want me to, I could cite some cases.

Mr. Cushman:

I believe that is it, if it please the Court.

Mr. Wolff:

I have one question, Your Honor. I think that might be all.

Re-Cross Examination.

By Mr. Wolff:

Q. Did you ever sell a house without the individual asking the selling price?

A. I have up until the time of drawing a contract. I certainly have.

Q. They knew the selling price, did they not, before they entered into a contract to buy it?

A. You asked me did I ever sell a house to a person in the sense of getting up to the point of signing the sales contract. Of course no property is sold until the contract is signed.

Q. People are well aware of the selling price when they buy the property?

A. I have had people that did not ask the total price and I had to tell them myself or state them in the contract at the time. They ask the down payment and the monthly payment. I think any real estate man will bear me out on that.

Q. It is not a sale until the man signs the contract, is that not right?

Mr. Cushman:

The Court can take judicial notice of that fact.

The Witness:

The procedure of selling, if that is what we are talking about, is that you have a bona fide contract drawn up with the legal description and the purchase price amount which is supposed to be paid by the buyer. The seller sells it at a certain amount of money. As the name implies from the legal standpoint, you are in earnest, and a certain amount of money is deposited. Then it is declared a sale provided all the terms and conditions are met by both parties.

By Mr. Wolff:

Q. When the contract is signed?

A. That is right, the sales contract being recorded as a legal instrument.

Q. Is there a difference in your mind between the fair market value and the selling price of property?

A. Is there a difference in the fair market price and the selling price?

Q. Fair market value and the selling price.

A. I believe that we had determined that that was part of the way you arrived at your selling price.

Q. A house sold today for $2,000, what would be the fair market value?

A. If similar houses in similar neighborhoods were selling for $2,000, that would be the market price.

Mr. Wolff:

No further questions, Your Honor.

The Court:

Anything further, Mr. Cushman?

Mr. Cushman:

No, nothing further.

The Court:

The witness is excused.

The Witness:

Thank you.

(Witness excused.)

The Court:

The Court is convened until ten o'clock tomorrow morning.

(Whereupon, at 5:35 o'clock p.m., a recess was taken until 10:00 o'clock a.m., Thursday, October 13, 1955.)

(Title Omitted.)

Hearing at Columbia, South Carolina.

Date: October 13, 1955.

United States Courthouse,
Columbia, South Carolina,
Thursday, October 13, 1955.

The above-entitled matters came on for further hearing, pursuant to recess, at 10:15 o'clock a.m.

Before: Honorable Craig S. Atkins.

Appreances:

E. C. Cushman, Jr., Esq.; L. E. McNatt, Esq., and T. R. Spillane, Esq., for the Petitiohner.

Herman Wolff, Jr, Esq., for the Respondent.

Proceedings.

The Clerk:

We will now resume with the Anderson cases, Docket Nos. 35385 and 35386.

Mr. Cushman:

I now call Mr. Morris.

Whereupon, W. H. MORRIS, was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk:

State your name and address, please.

The Witness:

W. H. Morris; 801 Broad Street, Augusta, Georgia. Residence, 914 Carolina Avenue, North Augusta, South Carolina.

Direct Examination.

By Mr. Cushman:

Q. Mr. Morris, you are presently residing in North Augusta and doing business in Augusta?

A. That is right.

Q. I believe the two towns are separated one from the other by about two city blocks.

A. The Savannah River. My residence is about two miles from the main business section of Augusta.

Q. How long have you been living in Augusta and doing business in Augusta?

A. Born in Augusta, and moved to North Augusta in 1941.

Q. You have been living there continuously since your birth?

A. I was in Columbia in real estate from September 1944 until April 1946.

Q. All right, sir. What is your age, please?

A. Forty-eight.

Q. Will you please state for the Court your present occupation and your general background with reference to your education and previous occupation?

A. I am now employed by Sherman & Hemstreet as a salesman. I attended Richmond Academy High School and grammar schools, and I have taken correspondence courses.

Q. Richmond Academy High School is located in Augusta, Georgia?

A. Yes, sir.

Q. You presently engaged in real estate?

A. Yes, sir.

Q. How long have you been engaged in real estate?

A. Nineteen years.

Q. Nineteen years?

A. Yes, sir.

Q. And you have been engaged continuously in the real estate business for nineteen years?

A. Yes, sir.

Q. Will you please describe for the Court the type of experience which you have had in the real estate business for the past nineteen years?

A. Well, I acted as salesman; placed loans on property; made appraisals of property; and when I was in Columbia, Sherman & Hemstreet opened an office and I was the manager of that office.

Q. Tell us something about Sherman & Hemstreet. What kind of an organization is it? What is its size?

A We have three executives, two property managers, and six salesmen.

Q. How long has Sherman & Hemstreet been in business in Augusta?

A. The firm of Sherman & Hemstreet has been in business twenty-five years; but Mr. Sherman, who is the president, has been in the real estate business probably thirty years.

Q. I know what your answer is going to be, but that is one of the most reliable real estate firms, is it not?

A. We do have one of the best real estate firms in Augusta.

Q. All right, sir. Will you tell us just exactly what experience you have had?

A. Well, any man that sells real estate has to appraise that property when he lists it for sale. It might not be an official appraisal where he appraises exactly, but he can look it over and tell about what the sales price should be. I am an appraiser for the Equitable Life Insurance Society.

Q. I believe the home office of that organization is in Washington.

A. No. Mine all go to Atlanta, but I think it is in New York.

Q. I believe that is right. He is a client of mine. I had it mixed up with another one.

A. I did not solicit, they came to me and asked if I would do it for them.

Q. Appraising for the Equitable Life?

A. Yes, they asked me if I would do that.

Q. What other people or clients do you have?

A. I appraise for all of the banks in Augusta, make appraisals for every one of the banks.

Q. In other words, are you stating that your appraisals of property are accepted by all the banks?

A. I have one on my desk right now.

Q. How many have you made for the banks there in Augusta?

A. That would be hard to answer, but I estimate around a hundred. The banks do not make many real estate loans. They do not lend small amounts on short term.

Q. What is your best estimate which you have made for Equitable Life or similar institutions or lenders?

A. Well, I would estimate for the Equitable Life I have made three hundred appraisals. I am also an appraiser—not for the Veterans Administration, but I have been appraising for Veterans Administration housing.

Q. Are you what is known as a fee appraiser?

A. That is right, sir.

Q. Just for the sake of the record, will you explain what is meant by a fee appraiser?

A. A fee appraiser is paid, I always get my money from the real estate broker, on a purchase of property with the broker. Then we get our money from the broker.

Q. Actually what you mean—

A. Except on a foreclosure. If the Veterans Administration forecloses on one and takes it over, then I appraise that for the Veterans Administration. I get a Government check for that.

Q. Actually, then, what your work consists of is appraising the value of property for the Veterans Administration—

A. With a guaranteed loan.

Q. But you get paid by the veteran borrower?

A. Yes, sir.

Q. Do you do any other work for the Veterans Administration or in connection with the Veteran Administration loans?

A. I have made several appraisals from plans and specifications for proposed construction and have also made what we call committee appraisals where they will build ten, fifteen, or fifty houses on two or three different elevations.

Q. I see.

A. We take the plans and specifications to an appraiser and go over those together.

Q. Have you ever done any inspection work for the Veterans Administration?

A. No, sir, other than when they have a foreclosure. I made those.

Q. In other words, you are not an inspector which checks on—

A. I don't check the construction. I am not a compliance inspector.

Q. That is what I meant to ask you.

All right, sir. How long have you been an appraiser or an appraiser accepted by the Veterans Administration?

A. It has been about eighteen months.

Q. If you know, answer this question: How does one get to be a fee appraiser for the Veterans Administration?

A. Mr. W. P. Lowe in Atlanta came to me and asked me if I would not be one. That is the way I got it. I think a lot of them have applied for it. You have to fill out a form stating your background and what you can do.

Q. That is what I want to know about. Will you tell us something about the form you have to fill out? out?

A. They wanted to know what properties you appraised, if you had ever been a witness in real estate suit, and how long you had been in the business. It is just a regular form you fill out so they can get your qualifications.

Q. That is the object of the form?

A. Yes, sir.

Q. And they just don't appoint everybody as a fee appraiser?

A. No. There have been a lot tried to get it and could not.

Q. Who is Mr. Lowe?

A. W. P. Lowe is the Chief of the Regional Appraisal Section in Atlanta. He is about to retire. He is on sick leave. Mr. Putman is the acting chief.

Q. Where is his office?

A. 105 Pryor Street, Atlanta.

Q. What did you say? You say Mr. Lowe is chief of what?

A. Chief of the Regional Appraisal Section of the Loan Guaranty Division of the Veterans Administration.

Q. All right, sir.

A. I also appraised thirty-three properties in Ellington for the Corps of Engineers and condemned them for the H-plant.

Q. You and I know about that, but the Court and these gentlemen do not know. Tell us about Ellington.

A. Ellington was a town of about seven hundred people. I imagine there were probably seventy, maybe eighty houses in the town, and I appraised thirty-three of them. A Mr. Robinson, who at that time—I don't know if he still is or not—was the head of the Corps of Engineers in Atlanta, and he and a gentleman came over to Augusta and asked if I would do that. I did not solicite that.

Q. And that town of Ellington is no longer in existence?

A. No, New Ellington.

Q. And New Ellington is encompassed within the confines of the Savannah River projects of the Atomic Energy Commission?

A. That is right.

Q. And the reason you were making the appraisal, the Government was condemning this land?

A. Yes, sir, and they wanted to know the fair value.

Q. Well, would you state whether or not that was a small operation or medium size?

A. The thirty-three of them?

Q. Yes.

A. The way they wanted it, it was large because they wanted it in a hurry. That was a right detailed appraisal. You had to measure every house and check the doors and windows and everything in it.

Q. That was the residences in the town of Ellington in Akin County?

A. Yes, sir.

Q. Did you ever testify as a result of those appraisals?

A. I had one.

Q. Did you testify?

A. Yes, sir.

Q. And by whom were you called as a witness?

A. By the Government, Corps of Engineers I believe they refer to it.

Q. And the rest of your appraisals had been accepted by the Government and by the land owner?

A. That was the only one I had to testify on.

Q. And the other thirty-two you did not have to testify on?

A. Yes, sir.

Q. All right, sir.

A. I might add the man got $750 more than what we appraised it.

Q. That was before a jury, too, was it not?

A. Yes, sir.

Q. Are you pretty familiar with real estate in and around Augusta, Georgia; the values there?

A. Yes, sir, by my own opinion I am.

Q. Are you pretty well satisfied that you know where the streets are that have been called off here—Cherry Street, Emmet Street, Calhoun Stret, Brookside Avenue in North Augusta?

A. I am not too familiar with Brookside, but I could probably find it.

Q. You don't know too much about it?

A. No, sir. My business is in Augusta. I know very little about North Augusta.

Q. Do you know Riverside, Mr. Anderson's property?

A. Yes, sir. I didn't know it was Riverside, but I know where the property is.

Q. Never heard it called anything except Anderson's property?

A. Yes, sir.

Q. Do you know where Sand Bar Ferry Road is?

A. Yes, sir.

Q. Do you know where Orange Street is?

A. Yes, sir.

Q. Know where Colorado Street is?

A. Yes, sir.

Q. Have you gone down and looked at that property?

A. Yes, sir.

Q. You went down and looked at it because we asked you to?

A. That and I had an appraisal to make down there about six months ago.

Q. In other words, you have gone down in response to our direction and also on your own?

A. I had a request to make a Veterans Administration appraisal down there.

Q. And that was right recent?

A. That was about six months ago.

Q. Six months ago. Well, are you familiar with the general type of construction prior to a period of six months ago?

A. Yes. I remember when Mr. Anderson started building down there.

Q. You say you remember when Mr. Anderson started building down there?

A. Yes, sir.

Q. When was the first time you recall seeing any construction going on down there?

A. It is hard to say, but I imagine Mr. Anderson started down there about 1930 to 1939. I had another job and that was just a side line: bought those lots down there, the land.

Q. Do you recall whether or not that was a cow pasture down there?

A. Well, it was. I never remember seeing any cows in it, but the land was considered low.

Q. Grass on it?

A. Nothing on it. It was not very attractive to anything.

Q. Did you have an occasion from time to time to observe the type of construction that Mr. Anderson put up down there?

A. Just in passing. I never made a thorough inspection of what was being constructed.

Q. From your observation, do you feel you could describe for the Court what the construction was like?

A. Yes, all of them that I have looked at.

Q. Well, tell us about it.

A. They don't have any footings. They do have some pillars, pillars around the side. No curtain walls. Some of them have two or three concrete

blocks just stacked up—maybe one or two has a block broken—that is used as a pier, a pillar. Some of them are propped up with a 2 by 4 or 2 by 6 or anything that you could find to prop it up with.

Q. Based on your observation of that property and from your experience, would you characterize the construction as good construction or bad construction or mediocre construction?

A. It is bad, what we refer to as the Veterans Administration's sub-standard.

Q. Sub-standard construction?

A. Yes, sir. The one I appraised for the Veterans Administration I turned down because of the construction.

Q. In other words, you refused to approve the Veterans Administration loan on it?

A. I didn't think the Veterans Administration should guarantee a loan on that house.

Q. That prompted you to reach that conclusion?

A. There were no footings. It was the same type construction I mentioned before. Some had cement blocks stacked up and some had 2 by 4's or 2 by 6's bracing it. The floors were not even. It did not have any cabinet in it, did not have a closet in it. In my opinion, it just was not something a veteran ought to put his money in.

Q. In other words, it was poor security for a loan?

A. Yes, sir.

Q. Did it have a bath?

A. This one had a bath. This was six months ago.

Q. Do you know whether or not there were any baths during the years 1941 to 1948 in those houses out there?

A. The ones I know about did not have baths. They had a little sink on the back porch and a hand pump.

Q. How about sanitary facilities?

A. A toilet in the yard.

Q. That was an outhouse?

A. Yes, sir; no flush toilets or anything like that. A grease trap or something, but no sink.

Q. Every one of the houses had an outhouse sitting out back of it?

A. Yes, sir.

Q. Now I believe that you have stated that you were in Columbia from when to when, sir?

A. From September 1944 to April 1946.

Q. Well, do you believe that you are qualified to testify as to real estate values in Augusta while you were in Columbia?

A. Yes, sir. I made numerous trips back over and kept in touch with what was going on because I was still connected with that office.

Q. Your position is that you kept up with real estate, you were able to keep up with real estate?

A. I went over on weekends and maybe during the week and talked with them and saw what was going on.

Q. Well, would this be a fair statement: that when a man is in the real estate business and is familiar with the property, that he can pretty well keep his finger on it whether he is there or not?

A. I can say this: that the houses we appraised in Ellington—I didn't know it, but two gentlemen from Columbia appraised the same house and we were just a few hundred dollars apart on our appraisal. And I think that I could come over to Columbia and appraise a piece of property over here myself.

Q. As I understand it, when you appraised the thirty-three houses down in Ellington for the Government, they also had other appraisers up here in Columbia?

A. I didn't know that, but they did.

Q. And you were just how far apart?

A. Just a few hundred dollars, less than a thousand dollars.

Q. Less than a thousand dollars apart?

A. Yes, sir.

Q. Is that on each house or the entire project?

A. That was only one house, the one we had a trial on. That is the one I know they appraised.

Q. What would be the appraised value of that particular house?

A. Thirty-seven thousand dollars.

Q. Thirty-seven thousand dollars?

A. In Ellington, yes, sir, because it had a little acreage; seven acres and beautiful pine trees. He never could have sold it for that but he was entitled to that because it was his home.

Q. Anyway, that is what the jury felt about it.

A. For him to go out and replace it and be upset, he was entitled to it.

Q. And so the $37,000 appraisal made by you and the gentlemen from Columbia, who did not live down there and did not know, you were only a thousand dollars apart?

A. Just something under a thousand dollars.

Q. Under a thousand dollars?

A. I have forgotten the exact figures.

Q. Less than a thousand dollars?

A. Yes, sir.

Q. All right, sir. Do you think that you are in a position to project yourself back now and give an appraisal of Mr. Anderson's properties as they existed in Augusta from the years of September 1944 to April 1946?

A. Yes, sir, I think I could testify on that because I kept in touch with things in Augusta.

Q. Generally speaking, with reference to the property down there on Sand Bar Ferry Road and on Orange Street and Colorado Street, the principal streets we are concerned with in this case, what would be your over-all valuation or what would be a general valuation of that particular property?

Mr. Wolff:

Objection, Your Honor. Just a moment.

Your Honor, on the last question that was asked, I think it is too general a question for the witness to answer, myself. If we are going to start at this point to ask his opinion, I would like to check a little bit further into this witness's qualifications as a witness to express his opinion with respect to value of property.

The Court:

Would you be agreeable to withdrawing your question for the time being and letting counsel for the Respondent cross examine him at this point?

Mr. Cushman:

Be delighted to do so, Your Honor.

Cross Examination.

By Mr. Wolff:

Q. Mr. Morris, did I understand you to say that you are forty-eight years old?

A. Yes, sir.

Q. You have been in the real estate business for nineteen years?

A. Yes, sir.

Q. Since approximately 1936?

A. September 1, 1936.

Q. What did you do prior to that time, Mr. Morris?

A. I worked three years at the Citizens & Southern Bank and seven years at the National Exchange Bank.

Q. What was the nature of your duties in those banks?

A. Well, in C & S, I started out as a runner and got up to what they call the Interior Department. That was taking all the deposits and spreading the checks out, different bank's checks, in one file and the other banks in another one, balancing out the deposit tickets. And I kept the bank ledger. That was a correspondence of banks.

Q. You had nothing to do with real estate transactions at all at either bank?

A. No, sir.

Q. Where did you start working in 1936?

A. With Sherman & Hemstreet.

Q. You have been with them since 1936?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. You state your present position is a sales position?

A. Yes, sir.

Q. How long have you been a salesman?

A. Since the time that I started in 1936. It is a right closely held organization. I mean the three executives there, the two Shermans and Mr. Hemstreet.

Q. And Sherman and Hemstreet are property men?

A. Property managers. We manage apartment houses and rental property, warehouses; make loans for the different insurance companies, the Provident and Chattanooga, Northwestern, Mutual, and the Prudential.

Q. Is a part of the duties of the property managers, the two men engaged in property management, the appraisal of properties?

A. No, sir, not necessarily. They might go with us sometimes. Their job is to see that the property is maintained and the rent collected, and try to keep it clean.

Q. You stated, "They might go with us." Who is "us"?

A. The salesmen. We will take two or three or four salesmen. Sometimes my brother, who is a property manager, goes along with us.

Q. Who in this firm of Sherman & Hemstreet determines the ultimate value of the property?

A. Well, we have all had enough experience—any one can do it by himself, but we will take two or three salesmen. And if Mr. Hemstreet or Mr. Sherman wants to go, we take them with us. But the salesmen have had enough experience to do it themselves.

Q. Either Mr. Sherman or Mr. Hemstreet ultimately decide the value of the property?

A. No, sir, the salesmen because we know more about it than they do.

I might add this just for your information. I am vice president of the Augusta Real Estate Board.

Q. What are your duties as vice president of the Augusta Real Estate Board?

A. Well, we have the directors' meetings, we have the board meetings once a month, and if there is any grievance comes up we have to try to straighten that out.

Q. What do you mean by "a grievance"?

A. If one broker thinks another broker stepped in on his sale, we try to straighten that out, and we

kind of regulate the policies of the board. Of course, if the president happens to be out of town and the meeting is held, I have to preside at that meeting. I have to make the programs.

Q. How were you chosen as vice president?

A. They put it to me.

Q. Who is "they"?

A. The board, the different brokers in Augusta. Every year you have an election of officers.

Q. Are you a broker?

A. No, sir, I am a salesman.

Q. And the brokers appointed you as the vice president?

A. The whole Real Estate Board had an election last December, and I was elected vice president; just like any other election would be in an organization.

Q. What is the difference between a salesman and a broker?

A. A broker is usually—in fact, I believe the Georgia Commission law is that a broker has to own his own business.

Q. You have to pass—

A. The requirements are the same. You have brokers in Augusta who are no more than salesmen.

Q. You have to have a license to be a real estate salesman?

A. Yes, sir.

Q. How do you get it?

A. You fill out a questionnaire, show how to make up a sales agreement, tell them about different instruments.

Q. When do you fill out that questionnaire, before you become a salesman or after?

A. Before you even try to sell a piece of property.

Q. Who passes on that application?

A. The Georgia Real Estate Commission.

Q. And they determine whether you can be a salesman?

A. Yes, sir.

Q. It requires no previous experience to be a salesman?

A. No, sir.

Q. How about to be a broker?

A. You have to have at least one year's experience as a salesman under some other broker before you can even apply for a broker's license.

Q. Are you a member of the American Institute of Appraisers?

A. No, sir.

Q. You are an appraiser for the Equitable Life Insurance?

A. Yes, sir.

Q. To become a broker, is it a different examination for the broker's examination than the salesmen?

A. I have never seen it, but it must be.

Q. And it requires a year's experience?

A. You should be a salesman for some real estate firm that has a broker's license before you can apply. Now in some cases where a man has had some unusual business experience, I think they waive that in one or two cases. That is true in a few cases that I know of, but it is not easy to do. You have to get a lot of real estate men to go to bat for you to do it.

Q. You have been a salesmen for nineteen years?

A. Yes, sir.

Q. How long have you been appraising property for the Veterans Administration?

A. I would say eighteen months.

Q. How long have you been appraising property for the Equitable Life Insurance Company?

A. I would say five years.

Q. When was your appraisal for the Corps of Engineers, the thirty-three houses?

A. I believe it was in 1950, I could be wrong one year. I know the plant was announced in November 1949, and I think it run, oh, around for about a year before they got into the town of Ellington. They had had some trouble with the farm appraisals and they wanted to get somebody else to do them, as best I recollect.

Q. Where is Ellington in relation to Columbia?

A. It was sixteen miles from Augusta at that time. It has gone down.

Q. Is that out toward—

A. Down toward Sand Bar Ferry Road and across the bridge, Highway 28 I believe it was at that time.

Q. Were you in the armed services?

A. No, sir. They refused me on account of my eyes.

Mr. Wolff:

Your Honor, Respondent submits at this time that this witness is not qualified to answer questions, to testify and give opinion evidence with respect—or opinion testimony with respect to the values of property in the years 1944 to 1948, for several reasons; the first being that he was not aware and it has not been shown that he was making appraisals during that period. Also, it has not been shown that he was well acquainted with the economic conditions existing in Columbia at that time, which would qualify him either in Augusta, I meant to say, which would qualify him to make retroactive appraisals at this time.

The Court:

Those are your reasons for the—

Mr. Wolff:
Yes, Your Honor.

The Court:
Is there a question pending of the witness? I can rule now.

I must overrule your objection, Mr. Wolff. I think that the witness testified that in connection with sales, during a portion of that period he did have to appraise properties and give an opinion on it. Now for whatever it may be worth, I think his testimony may be taken on values if he can show individual cases where he is familiar with the property.

Mr. Cushman:
I believe, for the Court's information, one of the earliest statements made by the witness was that he had been in the real estate business as a salesman for nineteen years, and that an integral part of being a salesman is appraisal work. I submit he has been appraising for nineteen years.

The Court:
I would like to know a little more about his familiarity with conditions and values. Just take during the approximate year and a half or two years he was away. Would you mind interrogating him yourself on that?

Mr. Cushman:
All right, sir.

Direct Examination.

By Mr. Cushman:

Q. Mr. Morris, directing your attention specifically now to the years September 1944 until April 1946, what, if anything, do you know about business conditions in Augusta at that time—real estate values at that time, and from what source did you gain your information?

A. Well, I would say I would go over and talk with them; look at property with them, property that had been sold. I know that that was right after the critical period when we had an emergency, no new construction, and everything sold was something that was already built.

Q. All right, sir. What else?

A. Well, the only thing I can say, I just know when I went over there they would tell me of some houses they sold. I just kept up with Augusta because I was interested in Augusta.

Q. I beliefe you were working for the Columbia office at Sherman & Hemstreet.

A. Yes, sir, but I did not stay there all the time. When I had some problems I would go to Augusta. I just made trips to Augusta I guess three or four or five times a month; stayed there two or three days at a time.

Q. Actually, then, during the time you were working in Columbia, you were working for a firm that had its main office in Augusta?

A. Yes, sir. Mr. Sherman was over here and he would tell me different things, advise me about different properties that were sold.

Q. In Augusta?

A. That is right.

Q. Did Sherman & Hemstreet have any other branch offices?

A. No, sir.

Q. Just in Columbia and Augusta?

A. Yes.

Q. And you were the manager of the Columbia branch during that period of time?

A. Yes, sir.

Q. Would you state whether the Augusta branch was actively engaged in real estate business in Augusta?

A. Very active, yes, sir.

Q. For the sake of the record, Mr. Morris, will you tell us the distance between Augusta and Columbia?

A. I think it is seventy-nine miles, I believe. It might be a little shorter.

Q. About seventy-nine miles.

A. About an hour and a half ride if you are not a fast driver.

Q. I assume you also had telephone conversations with the home office.

A. Yes, sir. I was here and there, and Mr. Hemstreet was here and there. I kept my finger on everything.

Q. Mr. Sherman was the president of the firm?

A. Yes, sir.

The Court:

I would like to ask a question of the witness. During the first, say, from 1943 to 1948, was there very much change in the value of real estate in Augusta?

The Witness:

No change, because it was just at that time you could not get listings; nobody wanted to sell because there had not been any construction for several years. If you got a piece of property listed, you could sell it the minute you listed it because there was a critical condition. You had priorities on building. You had to go through—you could not build more than a $9,000 house at one time, and you had to prove the reason you wanted to build it. The older houses would sell. Some people had saved up enough cash to finance them.

The Court:

Very well.

By Mr. Cushman:

Q. Now, you stated you placed mortgage money for lending.

A. Yes, sir, our firm does.

Mr. Wolff:

That is a leading question. The witness never stated he placed mortgage money.

Mr. Cushman:

If Your Honor please, if counsel would listen to the testimony, the witness called off Northwestern, Mutual, Equitable Life Insurance, Providence, Prudential—

The Witness:

Not for the—

Mr. Wolff:

He said he appraised for those organizations.

The Witness:

Our organization, Liberty Life in Greenville, and Northwestern, and Mutual because we work out of Winston-Salem with them; and the Prudential, Nashville, National Life and Provident.

Mr. Wolff:

Any more?

The Witness:

Well, the three that we have, we are their agents—nobody else in Augusta; Provident, Liberty, and Northwestern. Prudential is open, anybody can make a loan with them.

By Mr. Cushman:

Q. Now what is involved in the matter of placing mortgage loans for these companies? If you know, tell us what is involved in placing mortgage loans for these companies.

A. Well, when you make a sale and the man has as much as, oh, about 30 to 40 per cent that he can pay down on a piece of property and is well located—and these companies have certain areas they will not go in, but if the property is well located, the man's credit is good, and we recommend the loan, they usually accept it. I don't think we have ever had any refused.

Q. You say you recommend a loan. What do you base that on?

A. Sales price and our valuation of the property.

Q. Actually what you are determining is whether

or not the property is good security for a mortgage loan?

A. That is right.

Q. And if it is not good security loan?

A. We cannot recommend it.

Q. I believe that you stated you have been concerned with the placing of how many loans of that type?

A. I don't know. In nineteen years, you know, it can be pretty hard to say. I could not even guess.

Q. But your firm has been doing that?

A. Ever since I have been there. You have to do it, you have to finance it.

Q. If you cannot finance them, you cannot sell them?

A. That is right. Financing is as hard as selling.

Q. All right, sir. Now let me ask you this question: In your opinion does the size of the down payment have anything to do with what a person is willing to pay for real estate?

A. Mr. Cushman, I thought about this after I was over here yesterday. I have done it, had two occasions to do this, where the trustee, one of the banks listed about I guess ten or twelve houses with us—they were not very good houses, twenty-five hundred to thirty-five hundred dollar bracket. The people living in them did not have very much income; one was a widow. We allotted those different ones to the salesmen to contact the tenant in the house to see if they would buy. Well, I had only one that said they thought they could buy it. This lady had three hundred dollars. Well, I had one lender in Augusta I thought maybe might lend her that money because she had been a good moral risk.

This party went out and talked to her and she didn't want to make a loan on somebody she might have to foreclose on. We tried and could not sell those properties that way.

There is an organization in Augusta called Ways and Means for the Blind, a charitable organization. Mr. Smith is the head of that organization and he has done a good job with it. He has done this before, and I got the idea Mr. Smith might buy these houses. He bought the houses, say, from twenty-five hundred to thirty-five hundred. I cannot say the exact figure. To Mr. Smith, then, that was a thirty-six hundred sale, I think. He then goes to each tenant and sold practically every tenant the house without any down payment or for about a thousand dollars more than he bought the house for. So there was a difference between a cash sale and an easy financing sale.

Q. In other words, you were not able to sell with a down payment, and within a month's time he sold them all with no down payment?

A. He just wanted interest for this organization. I sold him another piece quite the same way, and another broker sold him some the same way. Sorry property is hard to finance.

Q. Speaking of sorry property being hard to finance, were you ever able to find someone who was willing to lend a dime on Mr. Anderson's property?

A. No, sir. I never even tried.

Q. No lending institution would down there at all?

A. I don't believe that any real estate firm in Augusta has actually sold one of Mr. Anderson's houses because when he comes to your office and wants to list his house for you to sell you know you cannot sell it. I would not waste my time, would not put a sign on it. I mean the property down there was at

that time, and still is, junk yards and juke joints; killings and everything else. In fact, they had to close up some places down there.

Q. I guess that includes Mr. Anderson's property?

A. It might be a little better now than back in 1945 and 1946.

Q. In other words, you would not classify it as a desirable neighborhood to raise children in?

A. Somebody might want to, I would not want mine to be raised there. All due respect to Mr. Anderson.

Q. Based on your previous testimony, would you give us your opinion as to whether or not any paper which Mr. Anderson took on this property, mortgage loans, that any paper that Mr. Anderson took on this property would be saleable in and around Augusta?

Mr. Wolff:

Objection, Your Honor. I do not believe there has been any indication that he is qualified to testify with respect to this paper that Mr. Anderson received. Nobody knows anything about it at this point. At least the witness does not.

The Witness:

I know a little about selling mortgage paper.

Mr. Cushman:

Wait just a minute.

The Court:

The objection is sustained until you qualify the witness further.

By Mr. Cushman:

Q. You say you know a little about selling mortgage paper?

A. A little. The average person who is going to invest money is going to have a good risk, and why sell. There has to be some reason to sell.

Q. Tell us what you do know. You say there is not much mortgage paper sold?

A. Other than where they sold F.H.A. loans.

Q. What do you know about it?

A. You can never get face value for it, it is always discount.

Q. Always at a discount?

A. Any that I have ever known of, I have never got full value.

Q. That includes the transfer of F.H.A. loans?

A. I think that might pay a few points.

Q. Tell us what you know about the sale of mortgage paper, if anything.

A. Well, I say there is very few individual mortgage paper sold in Augusta.

Q. Have you ever seen any sold, anything specific?

A. I have heard of them. Nothing specific, but heard so and so sold mortgages to someone else. But he needed money and had to sacrifice.

Q. Is it your testimony that mortgage paper is usually just about always sold at a discount?

Mr. Wolff:

Your Honor, he is putting in a lot of hearsay testimony here, leading the witness, and so forth. I just do not think it is appropriate to have one man get in here and say something with respect to mortgage paper. That is purely hearsay—at least his testimony

is. There has been no indication as to how he knows or why he knows or anything else.

Mr. Cushman:

Rules of evidence are designed to get facts before the Court, facts of probative value. Now my friend might—and he is exactly right, perhaps. He might have some technical objection to hearsay, but it is obvious we are trying to find out if the man can testify. Anybody who has ever seen real estate agents operate know they have a trade talk. I think the Court can take judicial notice without hearing about a case but tried in fifteen minutes. It is the same thing with real estate, the customs of the trade. If he gets it that way and he runs his business on the basis of what he hears, it looks like to me that is pretty competent evidence.

The Court:

It seems to me that this witness has not shown any familiarity with the value or selling price of mortgage paper. You may proceed to question him further.

Mr. Cushman:

I would like to point out to the Court that there is not much experience to be gained because not much of this paper has been sold. If a man has a little experience, and there is little to be gained, then it seems to me that logically he ought to be able to testify.

The Court:

If all he knows is hearsay, I doubt that you can be able to testify as to values on hearsay unless he was a party in some way to some deals of that sort.

Mr. Cushman:

I think that is a limited sort of testimony. The rules which you are trying to lay down now, if Your Honor please, we think they are going to serve lunch at the Jefferson Hotel, but that is hearsay evidence. This man is basing his statements on what he heard in the trade and what went on there in Augusta in a general sort of way, and I think the testimony ought to be competent.

The Court:

The Court would agree with you on that, but I doubt if he has shown any familiarity with that at all, with that particular part of the real estate business. In fact, it may not be a part of the real estate business in a strict sense. Why not question him somewhat further?

Mr. Cushman:

All right, sir.

By Mr. Cushman:

Q. You say there is not much individual mortgage paper sold?

A. Well, it would not be sold through a real estate company, I don't believe. I do not know of any cases where they come into our organization and say, "I have a good first mortgage I want you to sell for me." That man that made that loan does not have any reason for selling it. He has a good six per cent investment and it is going along all right. Unless he has a catastrophe, there is no use for him to sell it.

Q. Actually, then, you have never participated in the execution of any mortgage paper?

A. Never sold one.

Q. Never sold one?

A. No, sir.

Q. You have heard some people in Augusta have sold mortgages at a discount?

A. Yes, sir; I mean because they needed the money in a hurry, they were in bad circumstances.

Q. All right, sir. Now based on your experience and your observation, could you give the Court your opinion of the general value, true value, of Mr. Anderson's property down there on Riverside, Orange, and Colorado?

A. Mr. Cushman, he has built down there probably—

Q. Let me tell you something else. I want you to go back and project that into the years 1945, 1946, 1947, and 1948. Those are the years with which we are concerned with there, and your testimony is to value now. I want you to distinctly understand that it is confined to those years, if you can project yourself back there.

A. I am more familiar with the later part of 1946 than I would be with the time I was in Columbia, but it has been stated before about the type of construction that he had. Do you want me to go into all that?

Q. Are you satisfied that that testimony is correct?

A. It is correct.

Q. When you got back to Augusta in April 1946, will you fix your value in 1946, 1947, and 1948?

Mr. Wolff:

Just a moment. I do not believe there has been any showing as to exactly those property values or that particular segment. I think we should get that into the record, exactly what the value was.

Mr. Cushman:

If Your Honor please, we have referred to the Riverside Development, the original cow pasture, the Sand Bar Ferry Road, Orange Street, and Colorado Street. I am sure my friend knows what property I am talking about, and I believe the Court knows. Now if you want me to rephrase the question, or if you want the witness to answer—

The Court:

I am afraid the witness might be confused as to whether you are asking for a total valuation or an average valuation in the sub-divisions, or the average of several sub-divisions. Perhaps you better clarify the question.

By Mr. Cushman:

Q. With particular reference to the years 1946, 1947, and 1948, and with particular and specific reference to the houses built by Mr. Anderson down in Riverside and located on Orange Street, Colorado Street, and Sand Bar Ferry Road, would you give us your opinion as to the average true value of those houses?

A. Well they are all so much alike that if you see one, you have seen them all. Of course I have seen more than one, but he has not got a house down there on what we call a conventional sale where you would sell it and the man would have to pay a third down and get a loan. You would not have sold anything down there for over $2,500.

Q. Twenty-five hundred dollars was the top figure for anything in the sub-division?

A. Yes. The reason for that is the construction of the houses; lack of facilities; no paved streets; no

street lights; the school was not close to it then; and the environment getting to it you went through the worst approach you possibly could to get to your home, and you were living in it. All that sprung up during 1941 during the war when Camp Gordon was there. That was just across the city line. I don't know what went on, but they could always do a little more in the county than in the city.

Q. Actually, that property was located in the county outside the city?

A. Within about two blocks of the city.

Q. Do you know whether they had any water and sewers?

A. No, sir.

Q. None at all?

A. No, sir. The streets were not paved. Even right now, I have eleven lots for which I have been trying to get three hundred dollars apiece.

Q. They are within a block of Mr. Anderson's property?

A. In a better location than his.

Q. What is the border side?

A. Fifty by one hundred fifty.

Q. And you cannot get three hundred dollars?

A. You could get water to those lots by running the water two or three hundred feet. You could get water, but no bathroom.

Q. That is today?

A. That is today, yes, sir. And it ought to be better now than it was then.

Q. All right. Now one other question. What is the relationship, if you know—based on your experience, what is the relationship which exists between the value of property and the amount of money which a lender is willing to lend on a piece of property? What

is the general formula for determining the size of a loan?

A. I stated one there where Mr. Smith was willing to make just a thousand dollars, but they will pay anything in this world for a house without paying anything down if they have to move. If they are for forty-dollars, they don't care what they pay for it. They don't care whether it is a twenty-year loan or a sixty-year loan.

Q. All right, sir. Now with respect—excuse me.

A. I think it would probably be the same with me if a man wanted me to pay $100 down and pay $25 or $40 a month. Not down there, don't misunderstand me.

Q. All right. Glad we got that straight.

Now going back to really good business, Northwestern, Mutual, Equitable Life, and Liberty Life and all those people, what is the usual loan which they will make on property, relationship percentage-wise?

A. They will make a two-thirds loan. That is the limit. I don't know any case where they have gone above that. A man has to have one-third down payment.

Q. In other words, tell me if this is correct, it is the general policy that reputable lenders will not lend more than two-thirds of the actual value of the property.

A. That is the rule. Now the Realty Savings Bank in Augusta, which is individually owned—it is not a state bank; it might be a state bank, but it is all owned by one family—they can do mostly whatever they want to do. But they are right conservative.

Q. How do their practices compare with general practices?

A. They stick to that in most cases, but if a man is pretty well liked by the president and vice president, he might get a little bit better loan than the average men.

Q. And I would assume that holds true for Georgia Railroad National Bank & Trust Company.

A. I believe their limit is 60 per cent and on short terms.

Q. They are just not interested?

A. They are not interested on long terms. If a man is in business, they make him probably a 60 per cent loan for two or three years. They are not on long term loans.

Q. Then based on your experience, it is just not good business, it is not accepted as good business practice, to make a 100 per cent loan on the value of property?

A. No, sir, I don't think so.

Q. You have never seen it done.

A. Except when it was guaranteed by the Veterans Administration.

Q. Well, when did those 100 per cent loans come out?

A. I am not sure. Of course it is not in now, you cannot get it now, but they started making G.I. loans about 1946, I believe.

Q. You could get 100 per cent back in those days?

A. I am pretty sure you could, but we did not get into it very much at the start because it was something new and we were not set up to handle it, there was so much detail. But we did get into it later.

Q. Do you know whether or not any V. A. loans have been placed in Mr. Anderson's project, Riverside Development?

A. I think there is one, maybe two.

Q. When were those placed?
A. Some years back.
Q. When?
A. When the thing first started, the V. A. was trying to do everything we could for the veterans. I might add that the V. A. does not like those loans they have, and one of the appraisers is dead now but he was relieved of his duties before he died.

Mr. Wolff:
I object, Your Honor. That is purely hearsay.

Mr. Cushman:
If you know the man is dead, that is not hearsay; that is common observance.

The Witness:
That was not hearsay. I could have proof.

Mr. Wolff:
You said the V. A. did not like the loans. That is purely hearsay.

The Witness:
It is not hearsay. They removed the man from the list that made that loan.

The Court:
You were personally acquainted with the transactor?

The Witness:
No, sir. Mr. Mulherin told me that, and he is pretty close to them in Atlanta.

The Court:

I think unless you know personally in this connection, you cannot testify to it.

By Mr. Cushman:

Q. Suffice it to say, that man is not working for the Veterans Administration now?

A. No, he is dead.

Q. And he was not working for them some time before he died?

A. That is my understanding. I was not making appraisals at that time. It is hearsay.

Q. Hearsay, all right.

Do you know anything about the property on Calhoun Street, 549 Calhoun Street?

A. I don't know the exact property, but I know the type of property on that block.

Q. You mean you know what it is today?

A. I have known it ever since I can remember.

Q. And you were born in Augusta?

A. White people used to be there, kind of called that Dublin. Irish folks lived there and called it Dublin. Of course they gradually moved away. As the older folks died, the children moved away and it just kept deteriorating. I doubt if there is a white family on that block now.

Q. They are colored?

A. I doubt if there was in 1945 or 1946. It is pretty rough stuff.

Q. What do you mean "pretty rough stuff"?

A. No bath rooms, no plumbing facilities, just houses probably fifty or sixty years old. It has just been rental property for so long that it is run down.

Q. Anything else?

A. None of them are painted. I think there is one two-story brick house on the block. It is near the railroad. It is an industrial area, railroad shops.

Q. About how far from the railroad?

A. Across the street.

Q. How big is the creek?

A. I said street.

Q. Oh, street.

A. Calhoun Street, and that property is on the north side.

Q. Right across the street from the W & C shops?

A. Yes, sir.

Q. Do you know where Emmet Street is there in Augusta?

A. Yes, sir.

Q. With specific reference to the year 1945, can you describe the general type of property that was?

A. Most of those houses in there, and I think 1111, is a four-room type. A shotgun type does not have any hall; it has a living room, kitchen, two bedrooms, and a bath—and just cheap construction, cheap neighborhood.

Q. Is generally cheap property?

A. Yes, sir, hard to finance.

Q. Sir?

A. Hard to finance.

Q. No market for it, no ready market?

A. I did make one sale for cash because a man wanted to be a bondsman and bought a piece of property for cash.

Q. Is that description generally true of Mr. Anderson's property in and around Augusta?

A. Yes, sir.

Q. And it has been true?

A. He has property he cannot finance.

Q. And it has always been that way?

A. Always been, ever since Mr. Anderson started to build. I don't want to be throwing off on Mr. Anderson, but he has property that nobody wanted to even try to sell. In fact, they should not have ever let him build it.

Mr. Cushman:

No further questions.

The Court:

I think we should take a recess before cross examination, perhaps five or ten minutes.

(Whereupon, a short recess was taken.)

Mr. Wolff:

No questions.

The Court:

The witness is excused. Thank you very much.

The Witness:

Thank you.

(Witness excused.)

Mr. Cushman:

Mr. Liner, come around please, sir.

Whereupon, J. L. LINER, was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk:
State your name and address.

The Witness:
J. L. Liner; Augusta, Georgia.

Direct Examination.

By Mr. Cushman:

Q. You are presently living in Augusta?

A. Yes, sir.

Q. What business are you in there, please?

A. I am employed as a department manager for the Modern Roofing and Metal Works.

Q. Will you please explain to the Court what your duties consist of, generally?

A. Well, I operate the Home Improvement Department for the company, handling the licensing of all the applications for loans which we have--practically all of the improvement is done on a loan basis, a large portion of it on a mortgage basis—and I handle the processing of all those applications, placing of the loans, and the supervision of the work.

Q. That is for the Modern Roofing and Metal Works?

A. Yes, sir.

Q. What size is that organization, Mr. Liner?

A. Well, I would say it is the second largest in the Savannah River area.

Q. Well, what do you mean by the Savannah River area?

A. Well, I would say within 100 to 150 mile radius of Augusta.

Q. How long have you been engaged in this particular employment?

A. Just a short time, three months.

Q. Will you state, please, your general business experience, if you had any, and your general educational background.

A. Well, I only had a high school education. I started in 1940 building houses and remodeling and have been in the industry ever since.

Q. By "the industry" you mean what?

A. Building and remodeling and repairing, financing and refinancing of homes.

Q. You have been engaged in that ever since 1940?

A. That is correct, except for one year.

Q. What did you do during that year?

A. Infantry.

Q. Infantry?

A. Yes, sir.

Q. How long have you lived in Augusta?

A. Approximately five years.

Q. Came there in about 1950?

A. Yes, sir.

Q. When you went into this general business you have described of building, constructing, and refinancing of homes in the year 1940, where were you living?

A. In 1940 I was in Chattanooga, Tennessee.

Q. How long did you stay in Chattanooga, Tennessee?

A. Until 1948.

Q. And were you engaged in that business all that time?

A. Yes, sir.

Q. Except for the year in the infantry, I would imagine.

A. Yes, sir.

Q. How old are you?

A. Thirty-five.

Q. Thirty-five?

A That is right.

Q. All right. Where did you go after you left Chattanooga?

A. To Birmingham.

Q. How long did you stay there?

A. Two years.

Q. You did the same type of work, did you not?

A. Yes, sir.

Q. How many houses have you built, Mr. Liner?

A. New houses?

Q. Yes.

A. From the ground up. I would say in excess of two hundred.

Q. Well, how many houses have you supervised or been—how many houses have you supervised improvements on?

A. It would be in excess of two thousand.

Q. What has been your experience with reference to the placing of mortgage money, financing of homes, refinancing of homes? I would like very much for you to go into detail on that.

A. In the first place, I would like to state that it has been my experience primarily in houses ranging up to $10,000 in valuation. Very few have I dealt with that were of a greater value. I would say the larger percentage has been dealing in houses that are of less than $6,000 valuation. My primary problem in financing improvements on this type of property is locating lenders or lending institutions, either indi-

viduals or institutions, that would handle a mortgage on that type of property in a sufficient amount that we might make needed improvements and in most cases pay off existing mortgages. Occasionally we find them that are clear, but primarily all of them have a mortgage of some type on them. A lot of them are very small and those mortgages have been taken throughout a number of years.

Q. Then you have had extensive experience—well, before I go into that, what experience, if any, have you had in appraising property for the purpose of placing loans on them?

A. Well, practically every application for a loan that I handle I make an appraisal to determine whether or not we make an application on that property to an insurance company or a bank or savings and loan association or any lending institution or an individual. I look and make my appraisal of all of the applications which require a mortgage to handle the financing.

Q. Will you please indicate to the Court what are some of the factors which you consider in appraising or determining the value of real estate?

A. Well, primarily it is the structure itself; the land that it is on; the street that it is on; the type of pavement; whether or not the house has electricity, water, gas, sewage, plumbing; the environment as regards to the surrounding houses, the neighborhood. Then the purchase price originally is taken into consideration, not in the appraisal of the value but in the possible placement of the loan. In other words, some banks will not deal in certain classes of property. I know that, and we don't approach them. Some of them we have to handle through individuals and various and sundry banks.

I would say there are probably a dozen or more different outlets for me to place various and sundry loans; my opinion of what the conditions of that particular property are, what the value of it is, the nature of the property and its surrounding area, and so forth.

Q. Let me ask you this: Those tests which you have just enumerated, are they applicable in Augusta or are they pretty generally applicable throughout the United States, if you know the answer to that question?

A. My experience has been that there has been very little variation in the apparent values of property in the southern area.

Q. Well, are you prepared to state under oath that you would apply the same test to the appraisal of property in Chattanooga and in Birmingham and in Augusta?

A. That would be true regardless of where the property is located.

Q. Same general test?

A. Yes, sir.

Q. And if you could ascertain the facts of a given property as of a given year, is it your opinion that you could make a retroactive appraisal of that property by using those tests?

A. I feel that I have a general knowledge of the value of property in this category that we are discussing, whether or not it be in any of the southern states that I am familiar with. I feel like that I could make an appraisal that would be within five or not over ten per cent of the appraisal of any lender in the industry.

Q. All right, sir. Just for the sake of the record, will you enumerate some of the lending institutions and individuals with whom you have placed loans?

A. Mortgage loans, I assume?

Q. Yes, mortgage loans.

A. In Augusta?

Q. Well, just anywhere. You can start in Augusta.

A. First Federal Savings & Loan Association in Augusta, Realty Savings Bank, the Georgia Railroad Bank, C & S Bank, Standard Loan and Investment Company, and numerable individuals in Augusta. Do you want the names of some of them?

Q. I don't know what Mr. Wolff will ask you. Give us the names of some of them.

A. Mr. W. R Brigam One is a Mrs. Sol Barren. A Paul and a Charlie Ruben. Those are the primary ones that I have dealt with in quite a volume.

Q. Did you do the same thing, place loans back in Birmingham, too?

A. Yes.

Q. Give us the names of the institutions.

A. Primarily the savings and loan associations in Birmngham. Almost all of the First Federal Savings & Loan Associations on mortgage paper.

Q. Well, did the same situation prevail in Chattanooga?

A. Yes.

Q. What did you do in Augusta from 1950 until the time you went to work for Modern Roofing and Metal Works?

A. Same type of work, home improvements.

Q. Same type of work?

A. Yes, sir.

Q. Did that also involve appraising and placing of mortgage money?

A. Yes. I average handling at least one application for mortgage on this type of property every day for the last—that is, every working day—I say this is an average for the past seven years.

Q. Well, now, when you say you handle one, that does not mean you placed it; that means you considered one.

A. That is true.

Q. Approximately how many loans have you placed in your lifetime, if you can give us your best recollection on that?

A. I would say—and it is a guess, I have never figured it out exactly—at least a thousand.

Q. Mortgage loans?

A. That is right.

Q. Is that during the whole time that you have been in business?

A. That is correct.

Q. What type of property was that on?

A. As I mentioned before, almost all of it was in property that was valued at $6,000 or less.

Q. Six thousand dollars or less?

A. Yes.

Q. Are you pretty familiar with real estate in and around Augusta now?

A. In that price range and up to $10,000, yes, sir.

Q. Do you know anything about Mr. Anderson's property down there on Sand Bar Ferry Road?

A. Yes.

Q. Have you ever had occasion to look at it or examine it?

A. Yes, I have had several occasions. The first was when an employee of mine agreed to buy a piece of that property.

Q. Well, please tell us what you observed at the time that you went down there and made your inspections, if you made any inspection.

A. This man had worked for me for probably a year, year and a half at the time, and he asked me to look at the property and see what I thought of it and if I thought it was worth him buying. I went with him and looked over the property and the houses immediately adjoining it at that time. Then along about that time there was one or two of those houses in that area under construction and I examined those, at least two of them very thoroughly. They were probably about 50 per cent completed at the time I made that examination. Then at a later time I was asked to examine a considerable amount of the property, practically all of it.

Q. All right. We will come to that in a minute now. What experience, if any, have you had with reference to the sale of mortgage paper, of mortgages?

A. Well in a good many instances I have taken first mortgages on this type of property in the name of the company I was employed for or business and sell that mortgage outright to some investor.

Q. Well, how many times have you done that?

A. Well, I hesitate to say exactly, but it has been a good many, several.

Q. Did you do that type of work in Birmingham and Chattanooga, too?

A. I placed the loans. I did not sell the mortgage paper as owner or executor of the paper myself in Birmingham. I have in Chattanooga.

Q. You did in Chattanooga?

A. That is correct.

Q. We want to know a little more about your experience in selling mortgage papers. Would you say

you have sold fifty times, one hundred times, five hundred times?

A. More than a dozen times.

Q. If you know, would you state whether or not there is an active market in the sale of mortgage paper, or if it is considered just the exception rather than the rule?

A. It is very much the exception, primarily because of the reasons that Mr. Morris gave on the stand. If the mortgage is worth holding, the man will hold on to it.

Q. And it is the exception to find papers for sale?

A. Yes, sir.

Q. But you have sold them?

A. That is true.

Q. And in excess of a dozen times?

A. Yes, sir.

Q. From your observation and experience, would you state whether that represents an extensive experience in selling mortgage paper or not?

A. I would say that it is not extensive in the sense by comparison to the number of transactions of that nature that are handled because primarily the banks and the usual lending institutions buy those mortgages or make the mortgages in the first place rather than some individual as myself. There are few mortgages taken by such individuals or firms as I am engaged in.

Q. Actually your experience stems from the fact that in order to make the improvements on homes it is sometimes necessary for the improver to take a mortgage and subsequently sell it to get his money out of it?

A. That is correct.

Q. And that is the way your firm operates now?

A. Yes, sir.

Q. And other firms that you have been associated with operate the same way?

A. That is correct.

Q. Would it be a fair statement to make that in the placing of these loans, these thousand loans and the building of these two hundred houses and the selling of this paper, that in each and every instance there was involved an active appraisal of the property which constituted security for the loans, repayment of the loans?

A. In each mortgage transaction that I have handled, yes, I have appraised the property from my own standpoint, my own evaluation, made application for a loan to the organization or individual that I thought would consider that loan, and then compared my appraisals with that of the bank appraisers that finally acted upon that application or the individual lenders who acted upon that application for terms.

Also, I have gone with numerous appraisers for individuals. Some individuals will appoint a realtor such as Mr. Morris to appraise property for him in ths category. If he wants to make a personal loan himself for so much on a mortgage, rather than trust his own opinion he will call in one or possibly two men in the real estate field for an appraisal. I have had several such lenders to ask my opinion on various and sundry pieces of property in this class.

Q. What experience, if any, have you had in the actual buying and selling of real estate?

A. I have never acted as a real estate agent other than in selling property that I might hold title to. I have sold a few pieces of property that I would have an occasion to hold title to either as agent or for myself.

Q. But actually you were never what is commonly known as a real estate broker or salesman?

A. No, sir.

Q. What has been the extent of your experience in selling your own property? How many pieces do you think you have sold?

A. Probably twenty.

Q. Twenty pieces?

A. Yes, sir.

Mr. Cushman:

If Your Honor please, we are going into the meat of the matter in just a few minutes. If Mr. Wolff wants to cross examine, I will save him the trouble of objecting. Just tell him to check the qualifications now.

Mr. Wolff:

On voir dire, you mean?

Mr. Cushman:

This is the time if you want to do it.

Mr. Wolff:

I believe I will wait until you ask the question. I do not know what type of testimony you want from the man.

By Mr. Cushman:

Q. In your opinion, Mr. Liner, was there any market for mortgages taken on Mr. Anderson's property in the Riverside Development?

A. Not unless it would be offered at a great discount.

Q. What do you mean—

Mr. Wolff:

Objection, Your Honor. I think he should show a basis why there is no market. I don't believe he has shown that there was a market or there was not a market. I would move to strike the last answer.

Mr. Cushman:

Wait a minute, if Your Honor please. He said, "I object. I think he ought to show why there was a market or was not a market." I am perfectly willing for the witness to do that.

The Court:

I think the witness should explain this.

Mr. Cushman:

And I would like for him to explain.

The Witness:

I have had an occasion to make an application for loans on two or three pieces of that property in question.

By Mr. Cushman:

Q. Will you explain the circumstances, what you did with reference to the application and what the end result of having the application made was?

A. Some of the buyers of this property wanted it improved and made application through us for a loan. In my opinion no individual lender would make the loan. I did try on two or three occasions to see if I could secure a loan from the savings and loan associations, and they would not consider it. They returned the application fee and said they did not want

to consider that property and gave some of the reasons.

Q. All right. What were those reasons?

A. Primarily the type of construction itself, which has been brought out here in Court, and the fact that generally it is considered a lower class of occupant in that property, the buyers. And that I think was arrived at because of the numerous beer joints, gambling establishments, and so forth in the immediate vicinity.

Q. Well as I understand, the real reason for you stating there was no mortgage for Mr. Anderson's property, lenders would not lend money on it in the first place. And if they would not lend money in the first place, they were not interested in buying.

A. I have never made any loans on the property simply because of following the bankers' judgments.

Q. In other words, you have never known anybody to lend money on Anderson's property?

A. I have never had the occasion for anyone to as an individual. It is my opinion that certain indviduals would loan money on that property at a certan percentage.

Q. What is that percentage?

A. I would say that they would loan 30 per cent of the valuation.

Q. Valuation of the property itself?

A. That is right.

Mr. Wolff:

Objection, Your Honor, and motion to strike. I think we are getting into opinion evidence again here, and hearsay also. This witness has testified in his opinion he thinks that he knows of someone who would give

perhaps 30 per cent of the value of the property. Now I think—

The Court:

I think that he is entitled to express his opinion because he has been in this business and he has attempted to appraise this particular property for the purpose of getting loans for the purposes of his company. Is that right?

The Witness:

Yes, sir.

The Court:

It all goes to the weight of it. The objection is overruled, Mr. Wolff.

By Mr. Cushman:

Q. Then it is your opinion, based on your observation of Mr. Anderson and your experience, that it might be possible to get lenders who would lend 30 per cent of the value of the property?

A. Yes, sir, I think so.

Q. All right. Is it also not true or is it also true that if an attempt were to be made to sell the paper which Mr. Anderson owned on that property you would probably not be able to get 30 per cent of the paper itself?

Mr. Wolff:

Objection, Your Honor. I think it is a leading question.

The Court:

Why don't you rephrase your question.

By Mr. Cushman:

Q. Is it also your opinion, sir, that the market value of any paper which Mr. Anderson received by way of mortgages, notes and mortgages, would not be greater than 30 per cent of the face value of those notes and mortgages?

A. In some cases I think it would be less than that. I would say none of it would be worth more than 30 per cent of the value of the mortgages taken.

Mr. Wolff:

Your Honor, at this point I would like to inquire on voir dire, to have the witness testify with respect to the question that was just asked.

Mr. Cushman:

All right, sir.

The Court:

You intend to question the witness now?

Mr. Wolff:

Yes, Your Honor.

Voir Dire.

By Mr. Wolff:

Q. Mr. Liner, I didn't exactly understand the company that you are presently working for, department manager of the Home Improvement Department of where?

A. That is right.

Q. Of what company?

A. The Modern Roofing and Metal Works.

Q. What type of business is that?

A. It is the roofing and metal works.

Q. You stated you went into the building business in 1940?

A. I have worked in the industry since 1940, yes.

Q. And you started out in Chattanooga, Tennessee?

A. Yes.

Q. Was that immediately after finishing high school?

A. No, sir. I graduated from high school in 1938.

Q. What did you do between 1937 and 1940?

A. I worked in a Venetian blind factory.

Q. Nothing to do with real estate or mortgage loans or anything of that nature?

A. No, sir.

Q. What company did you work for in 1940?

A. In 1940?

Q. Yes, sir.

A. The Chattanooga Realty Company.

Q. What was the business of that company?

A. It was a real estate and a building firm.

Q. You were attached to the building firm?

A. That is correct.

Q. Or in the building section?

A. That is correct.

Q. You never sold any real estate for that company?

A. In later years I sold some for that company to which—let's put it this way: In later years I became interested in that company and held title to certain pieces of property which I sold for myself.

Q. You never actually sold any for the company itself?

A. Not as an agent; in that sense, I never have.

Q. Do you hold any license, as a real estate license?

A. No, sir, I have never applied.

Q. Or salesman or broker?
A. No, sir.
Q. Your answer to that last question was no?
A. That is correct.
Q. Are you a member of the American Institute of Appraisers?
A. No, sir.
Q. How long were you with the Chattanooga Realty Company?
A. About four years.
Q. Until 1944?
A. In fact, until February of 1945.
Q. Is that when you went into the Army at that time?
A. That is correct.
Q. How long were you in the Army?
A. One year.
Q. You got your discharge when?
A. A little less, October of 1945.
Q. You returned to Chattanooga at that time?
A. Yes.
Q. What did you do then?
A. Built and remodeled houses.
Q. Were you working for a company?
A. No, sir, just for myself.
Q. How long did you do that, from 1945 until 1948?
A. Yes, that is correct.
Q. You left Chattanooga in 1948?
A. That is correct.
Q. How many buildings did you build in that time?
A. An average of one a week.
Q. That was your own company?
A. That is correct.
Q. You had nothing—
A. Now part of that was under contract for other real estate corporations in Chattanooga.

Q. You had nothing to do with the appraisal of properties during that period?

A. I had the position of placing the mortgage loans on that property, all that was built for myself. Now what portion of it was built for real estate firms, they handled that themselves.

Q. That was new construction, all new construction?

A. Not all, but mostly.

Q. Okay. You placed loans only on that that you built yourself?

A. That is correct.

Q. How many did you build for yourself, about? You said one a week?

A. I would say probably seventy.

Q. Seventy between 1945 and 1948, when you left Chattanooga?

A. That is correct.

Q. Why did you leave Chattanooga?

A. I felt I had a better opportunity in Birmingham with a larger firm.

Q. Were you working for someone when you left Chattanooga?

A. Beg pardon?

Q. Were you working for someone when you left Chattanooga?

A. No, sir.

Q. You went with a larger firm in Birmingham?

A. Yes, sir.

Q. What firm was that,

A. Alabama Building Company.

Q. Were they a construction outfit?

A. Yes, sir.

Q. What type of buildings?

A. Primarily remodeling business.

Q. Do any wrecking?

A. No, not other than tearing away of porches and that.

Q. In connection with the remodeling work?

A. We were not a house wrecking firm, no.

Q. Any wrecking was in connection with the remodeling?

A. That is correct.

Q. What was your position with the Alabama Building Company?

A. Estimator.

Q. What did you estimate?

A. The cost of remodeling, and construction if there was any construction.

Q. How long were you with the Alabama Building Company?

A. Until June of this year.

Q. Until June of this year?

A. That is correct.

Q. When did you move to Augusta?

A. In 1950.

Q. You moved there while you were working for the Alabama Building Company?

A. That is correct.

Q. Transferred over to Augusta?

A. That is correct.

Mr. Wolff:

Your Honor, Respondent submits at this time that the testimony of this witness is certainly not competent to go into appraisals and values of money and everything. He has testified with respect to prior experience—estimator, was in the Army for a while there, he built his own buildings, and placed loans on new construction that he built himself. That does not

seem to have too much to do with the appraisal of old properties or anything else.

I submit that as an estimator he learned something about properties and how they were constructed, but that does not qualify him as an appraiser of properties.

Respondent moves at this time that the answer to the last question be stricken as not being competent testimony as an expert.

The Court:

What was the last question and answer?

Mr. Cushman:

We are going to resist that. Mr. Wolff knew I was going into the witness's opinion. I told him I was going into it. I offered to let hm examine the witness on vor dire, and he said, "Go ahead." The questions were asked and answered. I think all Mr. Wolff has done in his examination was to ask a few details of where the man lived and who he worked for. The testimony remains that he built houses, that he estimated houses, that he placed mortgage loans. That is the meat of the man's testimony, and I think that that is in there and he is qualified to answer any further questions.

The Court:

Read the question and answer.

(The question and answer were read by the reporter.)

The Court:

It is the opinion of the Court that this witness does not have wide experience and knowledge. He does have some knowledge of values through his work. It goes to the matter of the weight to be given to this opinion evidence. Even persons who are not experts can give opinions when the Court feels it might be of some help. For that reason it will be recieved. The objection is overruled, Mr. Wolff.

Mr. Wolff:

I am through with that portion of the cross examination, Your Honor. Petitioner's counsel can resume the direct examination.

Mr. Cushman:

Thank you.

By Mr. Cushman:

Q. Well, Mr. Liner, have you ever built any houses and taken mortgages back on them and subsequently resold those mortgages?

A. Yes.

Q. Will you relate to the Court, please, the extent of those transactions and give us some of the details?

A. There has not been a great number of them. I would say in Augusta probably ten or twelve cases where I built a house on property owned by myself or my employer, and take a mortgage from a buyer and sell that mortgages.

Q. Well, give us a specific example of your having done that; names, dates, facts, and figures.

A. The first one that I built was shortly after I came to Augusta. I built it in an undesirable locality. I built a house intentionally sub-standard from the

standpoint of F.H.A. or expensive construction in what is called Nellyville, a subdivision in the south part of Augusta. I built a small four-room house without plumbing fixtures. The materials were good, all new, and the workmanship was good. By that in the way of terms, I mean we used mill manufactured doors and windows and similar trim on the casings and facings. But we did not build it on sixteen inch, we bult on two foot centers and studs and rafters and so forth. On completion, I offered that house for sale for $4,500. I held it for some three months, I would say, in an attempt to sell it.

Q. Let me ask you, how much did it cost you to build that house?

A. The house cost me between $2,100 and $2,300.

Q. You offered it for sale for $4,500?

A. That is correct. I finally found a buyer, but they did not have any money to pay down. So I took on the house a $4,500 mortgage and let the man move in. It was my intention to try to salvage a reasonable profit out of the building and go on. I attempted to sell that morgage and finally did sell it to one Mr. Charles Ruben for either twenty-seven or twenty-eight hundred dollars. I don't recall the exact figure. It was less than $3,000. It was the first mortgage on the property.

Q. Actually, then, you built the house for $2,100; sold it with no down payment in the amount of $4,500; and subsequently sold the mortgage for about $2,800?

A. That is correct.

Q. How many times have you done the same thing?

A. Well, in varying degrees, I would say ten or twelve.

Q. Ten or twelve times?

A. Not always in that exact ratio

Q. But the same general type of thing?

A. That is correct.

Q. Did you have occasion during early January 1955 to make any examination or any inspection of Mr. Anderson's property with reference to making an appraisal of those properties as of certain years?

A. Yes, sir, I did.

Q. Who asked you to do it?

A. Mr. Anderson.

Q. What did you do in response to his request?

A. I looked at each and every piece of property mentioned. I was given a list of properties to look at, and I did. In my own mind I placed in the valuation as of the current market and the current loan value. And in my opinion at that time, and it is now, that the current market is probably 30 per cent greater than it was during the period in question.

Q. What do you mean by "the period in question"?

A. I was asked if I could make a statement of the valuation of that property during the period primarily between 1946 and 1948.

Q. Did you make such an inspection and such an appraisal and such an evaluation?

A. From my own current appraisal and the cost appraisal, I made in my opinion what was an appraisal of the property in those years.

Q. What factors, if any, led you to believe it would be 30 per cent higher than it was in those years back there?

A. Well that is due to the fact that the building costs are greater, and all real estate is up approximately that percentage.

Q. Do you know whether or not that property is presently within the city limits?

A. There are portions within the city, but most of it is without the city.

Q. Based on your experience as a real estate dealer and lender and so on, you are satisfied and you offered your opinion to the Court that you arrived at your computations for the years by making a current appraisal and taking 30 per cent of that?

A. That is correct.

Q. At the time you made this inspection and appraisal?

A. Thirty per cent of reduction.

Q. Yes. I am sorry.

At the time or shortly thereafter, after making that inspection, did you make any written memoranda or prepare any form or report or summary of any kind?

A. Yes, sir.

Q. Do you have that with you?

A. Yes, sir.

Q. Will you please produce it.

Now these two sheets that you hand me with typewriting on them and bearing in ink the signature of J. L. Liner, and being dated January 20, 1955, did you actually prepare these sheets?

A. I had a secretary do it.

Q. Was she working under your supervision?

A. He was.

Q. He was. You have checked the figures which are on there?

A. I wrote them out in longhand and had him copy it off. I didn't dictate that.

Q. And the figures which are on here represent your conclusions as of that time?

A. That is correct.

Mr. Cushman:
Would you mark this Petitioner's Exhibit 3 for identification?

(Petitioner's Exhbit No. 3 marked for identification.)

Mr. Cushman:
I anticipate offering this in evidence, so I will submit it to opposing counsel at this time.

Mr. Wolff:
Are you offerng it at this time.

Mr. Cushman:
No, I am letting you look at it.
If Your Honor please, we would like to offer this into evidence at this time. I submit it to the Court.

Mr. Wolff:
I didn't understand what he said.

The Court:
It is offered in evidence.

Mr. Wolff:
I will look at it now, Your Honor, when you are through.
As I understand, this represents a typewritten copy of something.

Mr. Cushman:
Just a moment. I will go along with the informality to the enth degree. He either states his objection or that is the end of it. The Judge runs the Court but I am not going to—

Mr. Wolff:

I can cross examine as to the validity of the document, and I want to see what it is.

Mr. Cushman:

I laid the foundation. If he does not like it, let him state his objection, sir.

The Court:

Mr. Wolff, he did elicit from the witness that he made the examination at the request of the Petitioner; and by examination of all these properties he determined that the values now generally are 30 per cent higher than they were in 1946 and 1947, and by reducing the values he found these values as he does now testify—that in his opinion those are the values as of the dates of sale in 1946 and 1947.

Now do you have any objection on the basis of that testimony other than the objection you made before, I believe, that he is not competent to testify as to value?

Mr. Wolff:

Your Honor, this summary that has been prepared here, the testimony was that it was prepared, as I understood, that he wrote out this sheet and it was typed by his secretary. Evidently there must have been some underlying documents which he prepared in making this appraisal. I was wondering whether these underlying documents are here.

The Court:

I think he should have the right to ask that, although I must say that the witness has now testified, as I undersand it, that he has looked at this document and that is his opinion of he value.

Mr. Wolff:

Perhaps my objection, Your Honor, goes more into the competency of the witness to make an appraisal.

The Court:

I would imagine that you made that objection before.

Mr. Wolff:

Yes, Your Honor. I will withdraw the objection at this time, Your Honor, and not object to Petitioner's Exhibit 3.

The Court:

You may proceed.

(Petitioner's Exhibit No. 3 received in evidence.)

Mr. Cushman:

Since the document speaks for itself, there is no point in questioning it further, Your Honor. We would like to have the clerk put some suitable identification on the page 2 of the document and have the rght to withdraw and make photostatic copies and give back the original to the Court, if that would be satisfactory.

Is it all right with you to withdraw it at the present time?

Mr. Wolff:

I am going to cross examine.

Mr. Cushman:

I am talking about a reasonable time. The Court can mark it so there will be no question of validity when it comes back. I am talking about a reasonable

time; I am not going to take the thing out so he cannot cross examine on it.

The Court:
No objection on your part?

Mr. Wolff:
No objection.

Mr. Cushman:
All right, sir.
If Your Honor please, it is twenty minutes to one. I wonder if we can take the noon recess.

The Court:
If you are through with this witness.

Mr. Cushman:
No, we are not through with this witness, Your Honor, but rather than go out and consult for five or ten minutes and then come back, we would like to go for the noon recess now.

The Court:
We will recess until two o'clock for lunch.

(Whereupon, at 12:40 o'clock p.m., a recess was taken until 2:00 o'clock p.m., of the same day.)

After Recess.

2:00 p.m.

The Court:
You were interrogating the witness, I believe, Mr. Cushman.

Mr. Cushman:
Shall I proceed now?

The Court:
Yes.

Whereupon, J. L. LINER, the witness on the stand at the time of the recess, resumed the stand and testified further as follows:

Direct Examination (continued):

By Mr. Cushman:

Q. Just before the noon recess, as a matter of fact early in your testimony, you made the statement that in your opinion the market value of Mr. Anderson's mortgages on the Riverside Development and other properties was not more than 30 per cent of the face amount of those mortgages. I would like for you to tell the Court and opposing counsel on what facts, if any, you base that conclusion.

A. Well, I don't know that mortgages were on all of the property, but a greater percentage of it and particularly in the Riverside subdivision, I was told by Mr. Anderson as we—

Mr. Wolff:
Objection, Your Honor.

Mr. Cushman:
I do not think that is hearsay, if Your Honor please. The Petitioner is here before the Court, he is the Petitioner. It may work out to be a declaration against his interest.

The Witness:
I don't figure my statement—

Mr. Cushman:
Wait a minute.

The Court:
I do not know what he is going to say, but the Petitioner told him, however. I think that anything of that nature would be hearsay, would it not?

Mr. Wolff:
It is self-serving.

Mr. Cushman:
If Your Honor please—

The Court:
Let him answer and then move to strike if you wish.

Mr. Cushman:
Let's do it this way.

By Mr. Cushman:

Q. Did you make an inspection of the properties yourself?

A. Yes.

Q. Did anybody go with you when you made the inspection?

A. Yes.

Q. Did you make any effort to find out what the price of that sale property was?

A. No, I made no particular effort. Again I have to say I was told at this particular time and later saw evidence of what the property was sold for and what the mortgages were taken for on that same property in writing.

Q. In writing. Well, did you have any conversation with the Petitioner, Mr. Anderson, with respect to the sales price, the down payments, and the amount of the mortgages?

A. Yes. Not regarding all of the properties, but on a major portion of them I was told the amount of the selling price, the amount of the down payment on the transaction, and the amount of the mortgage taken on each specific piece of property.

Q. Were you ever at any time provided with any writing in any form to indicate to you what the selling price and the amount of the security deed and the down payment was?

A. I was supplied a list by Mr. Spillane which listed all of the properties that I inspected. I recall that a good many of them had both the selling price and the amount of the mortgage listed alongside of the identification of the property.

Q. I hand you several sheets of paper clipped to a piece of cardboard which appears now to be the list

which you looked at at the time you made your inspections and your evaluations.

A. It looks like the list to me.

Q. It looks like the list that you worked from?

A. It looks like the list that I observed. I was not supplied this list until after I had looked at the property and appraised it. Then I was given this list and observed the amount of the mortgages and in most cases the amount of the payments down and the monthly terms and so forth.

Q. Now on the memorandum which we offered in evidence, there was nothing about mortgages on that, was there?

A. No.

Q. After you had ascertained the selling price and the down payment and the amount of the security deed, will you tell us exactly what process of reasoning you went through to arrive at the conclusion that the paper was worth only 30 per cent of the face value?

A. Well, I think the best way to do that is by example of one or two specific pieces of the property that I looked at.

Q. The one or two examples which you will give, are those typical of the way you thought about all of the property generally?

A. Yes, sir.

Q. Give us one or two examples.

Mr. Wolff:

He has talked about the 30 per cent value of the property. I didn't understand the testimony to be that.

The Witness:

That is not the testimony I made.

By Mr. Cushman:

Q. The 30 per cent of the paper. That is what it was.

A. Not of the value of the property.

Q. All right. Now give us your one or two examples you have.

A. I noticed on this list that you just showed me that a piece of property that I would appraise as being worth $2,000 or $2,100 and up as high in some instances as $2,500, was sold from $4,500 to $5,000. There would be a down payment of in some cases from nothing up to I think a maximum of $500, most of them were $100 or $200 down payments, therefore leaving a total on a mortgage of $4,500, $4,700, or $4,800 on a piece of property that I would value at $2,100 or to the outside $2,500. In my opinion the valuation of the property being from $2,100 to not over $2,500, it is my opinion that a lender, any lender interested in making mortgage loans, would consider making a loan not in excess of say $1,500 on any of those pieces of property.

Q. In other words, then, by taking the face amount of $4,500 and what in your opinion a lender would be willing to lend, say $1,500, you then came to the conclusion that the mortgage, the actual market value of the mortgage, would not be more than 30 per cent?

A. Approximately that, yes.

Q. Approximately 30 per cent of the face amount of the paper?

A. Yes, sir.

Q. And you state that you had this list and you went over it carefully, or did you go over it carefully?

A. I read it completely and took note of all of those pieces of property that mortgages existed on and considered them.

Q. Now, Mr. Liner, this morning you started to relate an incident out of your own experience with reference to one of your employees either buying or contemplating the purchase of a piece of Mr. Anderson's property. Do you recall that portion of your testimony?

A. Yes.

Q. I would like, if you would, please, at this time to relate exactly what happened in connection with that transaction.

A. This man who was in my employ at that time approached me with the statement that he thought he would buy a house. I asked him where and he told me. He asked me if I would go look at the piece of property and see what I thought of it, see if it was worth the money. I did examine the house and went through it. I asked him what he was going to pay for it, and he told me approximately $4,500.

At that time he asked me what I thought the property was worth. I told him that we could build a comparable house in size of much better type materials complete for approximately $2,500. I told him that I had personally at the time lots that were, I thought, of greater value that I would sell him for $150 apiece where in my opinion he could have the same space, a much better built house of all new materials which would cost him about $2,650 or $2,700 for the house and lot. I advised him against buying it.

I heard no more of the transaction until I learned later that he had bought the house. Being interested in the man I asked him why he would buy the house

and pay that sort of a price for it, and he said he could buy it with nothing down.

Mr. Wolff:

Objection, Your Honor. This is hearsay testimony. This is what the employee was telling him as to why he did or did not buy the house.

Mr. Cushman:

I think his testimony here comes under an exception to the rule, or what we sometimes call the apparent exception. What we are trying to do is get before the Court the facts and the circumstances on which this gentlemen arrived at his opinion. We are not trying to prove what this buyer did, we are not trying to prove what this buyer didn't do. We are simply trying to give the Court the basis on which this witness formulated an opinion on which he has testified to.

The Court:

In other words, the point is that none of the instances in the course of his business upon which he makes up his opinion that he is testifying to—

Mr. Cushman:

That is correct, sir. What we are trying to do is establish one of those instances. We are not trying to prove Mr. Griffin bought the property or did not buy the property. We are trying to give to the Court all the facts.

The Court:

This is merely background to try to support the witness's opinion testimony.

As such, what do you say to that?

Mr. Wolff:

With respect to the conversation, Mr. Liner has no way of knowing the personal reasons, by personal knowledge or otherwise, why this employee bought a house or what was wrong with the house or anything else. He examined the house, he stated what he thought the house was like. Now why the employee bought it, I don't think that has anything to do with going into Mr. Liner's qualifications of why he reached a certain opinion.

The Court:

I should thnk that if he said in the course of his business many people had bought houses which were over-priced because they did not have to make a down payment or something of that sort, that he was asked to do that because of talking with all these people, probably that would not be objectionable.

Mr. Wolff:

Probably not.

The Court:

I am not sure if this is one of a number of instances.

Mr. Cushman:

It is one of a number of instances, Your Honor. We are just trying to be specific, if Your Honor please.

Mr. Wolff:

May I make an observation. This seems to be one instance involving one employee. Now I don't know of any other instances. The witness has not testified there have been numerous other similar instances.

Mr. Cushman:

I submit my friend will have adequate opportunity to cross examine the witness, and that it will be a fertile field for his examination.

The Court:

I wll let the witness answer.

Mr. Cushman:

All right, sir.

By Mr. Cushman:

Q. Did he make any further statement at that time as to why he bought the house?

A. Well, primarily because of the terms.

Q. The terms?

A. His reason that he gave me was that he could buy the house without anything down and pay notes of $35 a month.

Q. Have you had conversations with other people along similar lines; that is, that they would overpay for a house because there was no down payment or because they were buying terms?

A. I have not had people tell me that they would overpay for a house, but I have observed just that.

Q. People overpaying?

A. Yes, sir.

Q. And they would give as their reason that they bought the house—

Mr. Wolff:

He is leading the witness now. He did not give any reasons, he just observed.

Mr. Cushman:

Either the evidence has probative value or it does not. I think it is very important testimony. The character can be determined by the quality of the answers; either it is good or bad. We are not before a jury, we are before Your Honor, and you know the rules of evidence better than either one of us. Let us go back.

By Mr. Cushman:

Q. What experience have you observed or participated in or seen with reference to people paying too much for a house because the terms were easy or the down payments were lght?

A. I have known a good many people who have paid much more than the actual value of property because of either their inability to buy through the normal channels due to credit or character or income. And I have known them to buy a house simply because they could move into it without any down payment and pay less than what they could rent a sufficient space to accommodate their families.

Q. You have known that and have observed it?

A. Yes, sir.

Q. Now, Mr. Liner, in your testimony this morning you spoke of one occasion on which you built a house for some twenty-one or twenty-two hundred dollars; sold it for forty-five hundred; no down payment; taking a security deed for the full amount of the purchase price; and that thereafter you sold this mortgage paper for approximately twenty-eight hundred dollars. Do you recall that testimony?

A. Yes, sir.

Q. Do you recall the house which you had in mind at the time you gave that testimony?

A. Yes, sir.

Q. Based on your experience in building that house and based on your observation of Mr. Anderson's property, would you compare the house that you built with the general type of construction put up by Mr. Anderson in the Riverside subdivision?

A. I would say the house that I built was superior in quality and workmanship for these reasons: All of the materials were new; I did use skilled mechanics; I bought prefabricated mill manufactured doors and windows; all of the trim was of first quality materials; I used good hardware; I did space the floor joist and the studs on two foot centers; and in that particular case I used a single floor and I used a metal roof with 1 by 4's within 1 by 6's as decking rather than making a solid decked roof.

I would say that the houses that Mr. Anderson built that I observed, I am positive that a good many of them were built out of used lumber when they put them up. Some of the lumber had been scorched, had been removed evidently from a fire. At least some of the materials in the houses I have seen in question had been damaged by emoke and fire. A greater percentage of the materials were apprentely secondhand when they were put into the building.

So to sum that up, I would say the house I had reference to was quite a little bit better in qualities of materials and workmanship than any I have observed in this Riverside subdivision.

Mr. Cushman:

That is all. Your witness.

By Mr. Wolff:

Q. You were comparing in your last example, Mr. Liner, that the house that you built was better constructed. When did you build that house?

A. About two and a half years ago.

Q. And what was your cost on that house?

A. Between twenty-one and twenty-two hundred dollars.

Q. The costs have risen since 1948 in the building industry?

A. Some, yes.

Q. Was the house that you built similar to the ones in Riverside Park?

A. Similar in size, yes.

Q. What would you estimate to be the cost of those houses in Riverside Park?

A. As they are today or how they were constructed? There have been considerable improvements.

Q. I mean the original construction cost.

A. I would state originally they would cost from fourteen to seventeen hundred dollars apiece to construct.

Q. What would you say if you were given the cost of one of them to be fifty-two hundred dollars?

A. I would think there was money misspent.

Q. Suppose you were told all of them cost fifty-two hundred dollars or the majority cost in that range?

A. I think the man paid too much all the way along.

Q. For what?

A. For the labor and materials to go into them.

Q. You said they were sub-standard materials, did you not?

A. Yes.

Q. Would you believe that these cost that much?

A. I would not pay that to put them up.

Q. You would not pay that?

A. To put them up, no.

Q. If someone told you they cost that much, would you believe it or doubt it?

A. I would have to know who I was listening to pretty well before I would even form an opinion.

Q. If Mr. Anderson told you, would you believe it or doubt it?

Mr. Cushman:

Can one witness pass on the credibility of another?

Mr. Wolff:

Mr. Anderson's credibility has already been put into evidence by the first witness, Mr. Mason, as to his character.

Mr. Cushman:

It is elementary that you cannot ask one witness to pass upon the credibility of another witness.

The Court:

Proceed. Pursue another line, Mr. Wolff.

By Mr. Wolff:

Q. Did you discuss the cost with Mr. Anderson?

A. I don't recall having discussed the cost of the buildings.

Q. Did I understand this Exhibit 3, Petitioner's Exhibit 3, being the value that you have placed on the property in the Riverside sub-division to be 30

per cent in 1947—you took 1955 value and reduced it 30 per cent, is that right?

A. Approximately that, yes.

Mr. Wolff:

No further questions, Your Honor.

Mr. Cushman:

Step down, Mr. Liner. Thank you, sir.

(Witness excused.)

Mr. Cushman:

If it please the Court, this concludes the particular type of testimony which we would offer on the appraisal aspect to the matter. We understand that the Government has some witnesses that they would like to put up and might get rid of, more or less formalities of proof. We can go ahead and do that at this time.

Mr. Wolff:

I have no witnesses to put up at this time, Your Honor. There apparently is a misunderstanding. I didn't have any.

Mr. Cushman:

I suggest the Government proceed with its proof of the case.

The Court:

Well, do you rest your case as far as—

Mr. Cushman:

We are not resting our case. From the beginning of this proceeding we have been putting people out of order. It was our understanding that these four witnessee were being placed out of order for the purpose of trying to get something done, to keep the trial rolling while we tried to work out these stipulations, and other witnesses were put up for their convenience to get them out of the way. It would appear now that we have been working for some four days, and we are trying to begin the trial of this case, Your Honor.

The Court:

Well, of course as I understand it, there has been a deficiency determined against the Petitioner here as to which the burden would rest upon the Petitioner to overcome the presumption as to the correctness. Some of those years are evidently not barred by the Statute of Limitations. I understand that three, I believe, of the years would be barred unless the Commissioner could show fraud. As to that, as to those years, I should think if the burden is upon the Commissioner in the first place, then of course the burden is upon the Commissioner as to the fraud charge as to all years.

Now under the circumstances, I think the parties should attempt to determine who will go ahead with the presentation of evidence, unless you want me to rule upon it. Have you attempted to reach an agreement as to who should proceed first?

Mr. Cushman:

We have suggested that counsel proceed, that the burden of proceeding is now upon them. Chronologi-

cally and in the sense of justice and fairness, they are the ones who are opening up 1942 and 1943. The burden of proof is on them to prove that the Statute is not applicable by proving fraud. We think in viewing the case in a logical manner and in a fair manner that the burden of proceeding should be on the Commissioner, certainly with regard to those years because they come first and we think they ought to be first.

Mr. Wolff:

Our position is very much the same as stated by the Court. The deficiency is with respect to the years 1944 to 1948, which involve the greater bulk of deficiencies, and the burden is on the Petitioner. It would seem that the Commissioner has made a determination with respect to income taxes due from the Petitioner in those years and that it is up to the Petitioner to come in and disprove the determination which has been made.

Mr. Cushman:

A lot of the Government's witnesses have been sort of pleading with us that they be able to go home. I think that is entirely reasonable. I have seen people around the Courtroom here for several days—we have all been here several days, for that matter—but people being kept away from their homes and businesses, and only a small amount of proof. The contribution to the case so far has been of a relatively minor significance. We might go ahead with that, but we still stand as firm on our position that logically with the burden of proof being on the Commissioner for the first three years that the logic in trying the case dictate that they now have the burden of proceeding.

The Court:

Would you think then that if the Commissioner went ahead as to the first three years, that then it would necessarily be incumbent for him to go ahead with regard to the other years?

Mr. Cushman:

If Your Honor please, I think that that would be entirely dependent on what sort of proof the Respondent offered. We have to cross that bridge when we come to it.

The Court:

Well, at this state the Court is not able to say that there is any definite rule of the Tax Court that I am aware of as to who shall proceed in a situation of this sort. My own view, and a suggestion at this stage, is that it should follow the burden of proof; the party who has the burden of proof should be the one to proceed with the presentation of evidence. Now as to the first three years, that would be upon the Commissioner; as to the remaining years, that would be upon the Petitioner.

I would suggest—and this is merely a suggestion at this stage—that since the Commissioner has put in evidence, the statement of how he proceeded to determine his deficiency (and I assume that that is perhaps in the notice of deficiency, too), and since the taxpayer, generally speaking, is better acquainted with the facts in the case than the Commissioner would be, that the taxpayer should proceed to break down an of the Commissioner's figures that it can and proceed with the evidence. That is merely a suggestion. I would like for the parties themselves to try to determine that if they can.

Mr. Cushman:

We would like to point out that the voluminous schedule, which is Exhibit A, was not attached to the original notice of deficiency. While we have now had it for some time, got it just a short time before this Court session a year ago, that we have been arguing and disputing and trying to stipulate over the thing for a long time. Again we simply reiterate that the sheer logic of the matter, if the case is to have any chronology at all, would dictate that the Commissioner proceed at this time.

Mr. Wolff:

With respect to the schedule not being attached to the original notice of deficiency, it was attached to an amended answer, to the answer to the amended petition in the case, with the figures agreeing and the deficiency in the schedule itself agreeing that the deficiency—there being no increase arising as a result of the schedule being included in the answer or amended answer. I think as the answer to the amended petition. And we so plead.

Mr. Cushman:

If Your Honor please, we would like to suggest that the Court check the pleadings. In the first place what they did put on the amended answer to the first sheet here, which did not include the other schedules, and then in their answer they said the Commissioner affirmatively alleges in the first part of their answer —if the Court will indulge me while I am still hunting for a piece of paper—they pleaded what amounted to geny (?) as we would call it in other Courts, civil Courts. After pleading the general idea (??) on which

they would rely, they then made this statement: "The Respondent relies upon the following facts and affirmatively alleges—" Now I respectfully suggest for the Court's information—

The Court:
What did they affirmatively allege?

Mr. Cushman:
Well, I will read it. They alleged "that the Petitioner resided at Augusta, Georgia, and Mr. Anderson was engaged in real estate activities and other miscellaneous activities." We cannot argue with that. I don't think it s necessary to allege that. We set that fourth in the pleadings. We agreed he had miscellaneous activities that would cover almost anything.

"The Petitioner in that case No. 35386, same thing as of 35385, the Petitioners were wilfully intending to evade Federal tax and fraud" et cetera "for the taxable year 1948."

Then they say, "For the taxable year 1948 and for all the way back down the line, that they did not maintain books of accounts or the records which adequately reflect or disclose the correct taxable income which they received from the various activities in which they were engaged."

Then they say in the notice of deficiency, "They have determined the Petitioner's correct taxable income for the taxable year 1948 by the increase in the net worth plus personal expenditures and methods; and in making this determination of other miscellaneous records, memoranda, and other sources of information the following schedule reflects Petitioner's correct taxable income for the taxable year in question." And then they append this schedule here

which is a summary sheet appearing on front of Exhibit A, the increase in Petitioner's net worth plus amounts for known living expenses and loss from the sale of securities, less standard divisions in the amount disclosed as taxable income under 1948 which represents taxable income which Petitioner omitted.

By reason of Petitioner's failure to return that taxable income and the amount now due from income taxes and penalties as set forth in the notice of deficiency and so on, a part of the deficiency is set out on the part of Petitioner—Actually, Your Honor, what they did, instead of making what amounted to a general denial and put in for fraud, they came back in and made affirmative allegations.

The Court:

Still this is no more than if you had asked for a bill of particulars as to how the deficiency was computed in the notice of deficiency. Now I have not seen the notice of deficiency. That might not have been sufficiently in detail for you to understand. Nevertheless, as far as you have read there, they are not attempting to increase the deficiency over what was in the notice of deficiency.

Is that correct?

Mr. Wolff:

Yes.

Mr. Cushman:

These 295, but not as far as the deficiency in tax is concerned.

Mr. Wolff:

No.

Mr. Cushman:

They made affirmative allegations that they had to use the net worth in order to do it.

The Court:

But they had already used the net worth apparently in the notice of calculating the result reached in the notice of deficiency.

Mr. Cushman:

Apparently so, but I don't understand. They come back and make the affirmative allegation.

The Court:

It is apparently of no importance as far as I can see, unless they have affirmatively asked for an increased deficiency. They are not asking for an increased deficiency as far as tax is concerned, as I understand.

Mr. Cushman:

They had no right to use the net worth method in computing income, and why would they make—

The Court:

Nevertheless, the amount of tax determined is not requested to be changed and the presumption in figuring the purpose of that until there is some proof submitted to overcome it. Now this may be merely explanatory of how the deficiency was computed.

Mr. Cushman:

I think I see Your Honor's thinking. We have submitted our thinking on the matter. To tell the truth, that is a shotgun pleading down in this neck of the

woods. And I didn' know the Government attorney shotgun pleaded; I thought the laws did. I took them literally and thought they meant to go forward with the burden of proof.

Mr. Wolff:

Referring to the shotgun pleading, the petition was filed September 1954, and an amended petition was filed by the Petitioner. In that amended petition the Petitioner specifically refers to the net worth statement and alleges errors which have occurred in the net worth statement which at that time was in the hands of the Petitioner. By virtue of filing the amended petitions, the pleadings started all over again. If there was any different rule at that point, he took it upon himself to contest our net worth statement.

Mr. Cushman:

I said country lawyers used shotgun pleadings. I admitted it before.

The Court:

Well, I know of no other way of proceeding except pursuant to the burden of proof rule which I have set forth as my opinion on who rests the burden of proof. Now I do not care which party opens. I think it is up to you folks to settle it yourselves.

Mr. Cushman:

Well, we will take the solution of a five minute recess and see what happens.

The Court:

All right, we will recess for five minutes.

(Whereupon, a short recess was taken.)

The Court:

Have you had a conference on the matter of who should proceed with the evidence?

Mr. Wolff:

We did, Your Honor. I don't know that it came to a satisfactory conclusion, but the last suggestion was made that the Government proceed with the first three years of proving the fraud for the first three years.

Is that your position, Mr. Cushman?

Mr. Cushman:

You go ahead and talk. That was our last discussion.

Mr. Wolff:

But it looks at this point as though we have reached the impossible and have not reached a decision either way.

Mr. Cushman:

We proposed to the Government that they proceed with the first three years, and we take up from there. In order to save time, we are prepared to proceed immdiately.

The Court:

You are? Fine.

Mr. McNatt:

If the Court pleases, I would like to introduce at this time certain initialed schedules, initialed by Mr. Wolff and me, which I think is in agreement, is it not?

The first one is of the bank balances during the eight-year period beginning 1941. It is the beginning balance as at the end of 1940, which of course would be 1941. Mr. Wolff and I have both stipulated that these figures are correct and are in agreement.

The Court:
Now may I ask, are these related to Exhibit 1?

Mr. McNatt:
All of these schedules are related to Exhibit 1—Exhibit A, I mean.

The Court:
These are the items which are on Exhibit A which the parties are now in agreement on?

Mr. Wolff:
Yes, Your Honor.

Mr. McNatt:
Yes, sir.
The next is "L. T. Anderson, Security Deeds, Akin County, South Carolina."

Mr. Wolff:
What number is that please, Mr. Clerk?
Are you going to put a number on all of those, or all as one exhibit?

The Court:
They will be one exhibit.

Mr. Wolff:
I think that would be the easiest way, Your Honor, with the exception—

Mr. McNatt:
I believe I would rather have them separate.

The Clerk:
Joint exhibits?

Mr. McNatt:
Joint exhibits, yes.

The Clerk:
Joint Exhibit 4-K, the bank balances. Joint Exhibit 5-L, the security deed in Akin County, South Carolina.

(Joint Exhibits 4-K and 5-L marked for identification.)

Mr. McNatt:
Security deeds, Richmond County, Georgia.

(Joint Exhibit 6-M marked for identification.)

Mr. McNatt:
Security deeds, Jefferson County, Georgia; and Burke County, Georgia; both being on the same schedule.

(Joint Exhibit 7-N marked for identification.)

Mr. McNatt:
Loans from financial statements not included in security deeds.

(Joint Exhibit 8-O marked for identification.)

Mr. McNatt:

The next schedule, Your Honor, we have lined out certain items. Since lining out the certain items we have reached a compromise figure to insert in there, but for the purpose of this question I would like to introduce the schedule with the understanding between Mr. Wolff and me that this schedule will be withdrawn and these lines items, the correct figures inserted by agreement.

Mr. Wolff:

That is perfectly correct. This agreement he is referring to, Your Honor, there is a certain cost item shown on the cost of certain items shown on the schedule. Our agreement is that the Petitioner has determined a cost and the Respondent has determined a cost. We are going to take the difference and split the difference, and that will be the cost figure.

(Joint Exhibit 9-P marked for identification.)

Mr. McNatt:

Land and rental property, McCormick, South Carolina; and also on the same schedule, Jefferson County, Georgia.

(Joint Exhibit 10-Q marked for identification.)

Mr. McNatt:

If the Court pleases, the next schedule is "Property Acquired and Improvements, Richmond County, Georgia." This schedule while being introduced now relates to the previous schedule that we are going to withdraw and make changes, and the two schedules will be conformed to agree with one another.

(Joint Exhibit 11-R marked for identification.)

Mr. Wolff:

There are a number of items on 11-R which have not been ruled out on the original exhibit which Mr. McNatt is referring to will be made.

Mr. McNatt:

The next schedule will be "L. T. Anderson—Investment and Securities." There has been one item deleted from this schedule which will be a matter of proof. So this schedule will not be conformed.

(Joint Exhibit 12-S marked for identification.)

Mr. McNatt:

The next one is "Notes Payable."

(Joint Exhibit 13-T marked for identifcaton.)

Mr. McNatt:

If the Court pleases, I am putting this exhibit in not as a joint exhibit but as Petitoner's separate exhbit, which is headed "Security Deeds of Mother—Jefferson County, Georgia." This is not submitted as evdence at this time but is a recital of the facts that we intend to prove. I might say we are in agreement as to the amounts on this schedule, if the Court pleases, but we are not in agreement as to who owns them.

The Court:

It has relation to Exhibit A?

Mr. McNatt:

Yes, sir. All schedules have relation to Exhibit A. We will just identify this at this time.

(Petitioner's Exhibit No. 14 marked for identification.)

Mr. McNatt:

Petitioner's Exhibit for identification, "Security Deeds of Mother and Daughter—Richmond County, Georgia." This is for identification only.

(Petitioner's Exhibit No. 15 marked for identification.)

Mr. McNatt:

"Security Deeds of Mother and Daughter—Akin County, South Carolina," which is for identification only.

(Petitioner's Exhibit No. 16 marked for identification.)

Mr. McNatt:

"Investment in Securities for Mother and Sister," for identification only.

I might add, Your Honor, that these schedules that we are introducing, there is no controversy to the figures. The sole controversy is as to ownership only. Is that correct?

Mr. Wolff:

That is correct; the position being taken by the Respondent that the items listed were the property of L. T. Anderson. They were included in his net worth schedule and are in the schedule in Exhibit A. The position of the Petitioner, as I understand it, is that they are properties rightfully belonging to Mrs. Mary Poole Anderson, and in some instances the

daughter of Mr. L. T. Anderson, and in other instances Mr. Anderson's sister.

(Petitioner's Exhibit No. 17 marked for identification.)

Mr. McNatt:

The next is a schedule headed "Capital Gains, Sales of Rental Property and Unimproved Lands for the Years 1942 through 1948." If it pleases the Court, I believe that as we have now stipulated the selling prices listed here to be correct, the cost will be conformed to our agreement. As for the heading up here of "Capital Gains," that is merely what we recite as we are going to prove, and Respondent is not in agreement they are capital gains.

Mr. Wolff:

That is right. We are in disagreement as to whether they are capital gains or ordinary income, and nothing is to be implied by the Respondent by the heading.

The Court:

Is that for identification?

Mr. McNatt:

Yes.

(Petitioner's Exhibit No. 18 marked for identification.)

Mr. McNatt:

Mr. Wolff says it may be possible to stipulate this statement here. If it pleases the Court, right now we

introduce an exhibit headed "Houses Constructed for Rental" for identification only.

(Petitioner's Exhibit No. 19 marked for identification.)

Mr. McNatt:

I do not think we are in disagreement on this, but we have to check and find out later, if it pleases the Court, "Houses Constructed for Sale."

(Petitioner's Exhibit No. 20 marked for identification.)

Mr. McNatt:

The next exhibit is "Accounts Payable," which is for identification only. We intend to prove it.

(Petitioner's Exhibit No. 21 marked for identification.)

Mr. McNatt:

The next one, "Deeds to Security Debt, Not the Result of Real Estate Sales." I believe we will be in agreement on this schedule, and it is submitted only for the purpose of aiding the Court in case the Court finds that certain notes are not worth face value. These are the notes that are segregated on which we do not intend to argue that they are less than face value. The entire schedule is put in so that the two schedules together will total the amount of Exhibit 8.

(Petitioner's Exhibit No. 22 marked for identification.)

Mr. Wolff:

Respondent at this time offers for exhibits the income tax returns filed by the Petitioner L. T. Anderson for the years 1941 through 1946—there was no income tax return filed for 1947—and the joint income tax returns for 1948 filed by Mr. and Mrs. L. T. Anderson, Petitioners in the case here involved.

Mr. McNatt:

No objection.

The Court:

They will be received.

Mr. Wolff:

As Respondent's Exhibit U, the 1941 income tax return of Petitioner L. T. Anderson.

(Respondent's Exhibit U marked for identification and received in evidence.)

Mr. Wolff:

As Respondent's Exhibit V, the 1942 income tax return of L. T. Anderson.

(Respondent's Exhibit V marked for identification and received in evidence.)

Mr. Wolff:

As Respondent's Exhibit W, the 1943 income tax return of Petitioner L. T. Anderson, there being attached thereto also the various schedules filed with the return; a Form 1099 filed by the Petitioner with his return; a statement of income tax withheld on wages by Mr. Tannenbaum, employer; and also the

declaration of estimated income tax by advice of Petitioner L. T. Anderson for the year 1943.

(Respondent's Exhibit W marked for identification and received in evidence.)

Mr. Wolff:

As Respondent's Exhibit X, the 1944 income tax return of Petitioner L. T. Anderson, there being attached thereto waivers for three years, three separate waivers; also his declaration of estimated tax for 1944; a Form 1099 from the John B. Murray Company for 1944; and a withholding statement by M. Tannenbaum for the year 1944.

(Respondent's Exhibit X marked for identification and received in evidence.)

Mr. Wolff:

As Respondent's Exhibit Y, the 1945 income tax return of Mr. L. T. Anderson, Form 1040. There is also attached thereto two waivers and a withholding receipt for 1945 from M. Tannenbaum.

(Respondent's Exhibit Y marked for identification and received in evidence.)

Mr. Wolff:

As Respondent's Exhibit Z, the 1946 income tax return of Petitioner L. T. Anderson and one waiver.

(Respondent's Exhibit Z marked for identification and received in evidence.)

Mr. Wolff:

As Respondent's Exhibit AA, the 1948 income tax return of Mr. and Mrs. L. T. Anderson, the Petitioners herein; Lewis Thurston Anderson and Clyde Velma Anderson.

(Respondent's Exhibit AA marked for identification and received in evidence.)

Mr. Wolff:

Respondent requests at this time that permission be granted to substitute photostats for the income tax returns.

Mr. McNatt:

No objection. We would like the same privilege.

The Court:

They will be received, and photostats will be received instead of the originals.

Mr. Wolff:

Parties respectfully move at this time for the admission in evidence of Exhibits 4-K, 5-L, 6-M, 7-N, 8-, 9-P, 10-Q, 11-R, 12-S, and 13-T.

The Court:

They will be received in evidence.

(Joint Exhibits 4-K, 5-L, 6-M, 7-N, 8-O, 9-P, 10-Q, 11-R, 12-S, and 13-T were received in evidence.)

Mr. Wolff:

As Respondent's Exhibit BB, Your Honor, the records of Kirkpatrick & Bovwell, security dealers, Au-

gusta, Georgia, consisting of two ledger sheets and nine duplicates of invoices mailed. I call them invoices for lack of a better word. They are records of Kirkpatrick & Company.

Mr. McNatt:

If the Court pleases, I had an agreement with Mr. Wolff that I would not object to the documents on the basis they are not genuine. My objection goes to certain of them here. In the name of Mrs. Mary Poole Anderson, the invoice shows on its face that the transaction is that of Miss Anderson rather than that of Mr. Anderson; Mrs. Mary Poole Anderson being Mr. Anderson's mother. I object to the admission of the document on the ground, the ones marked Mrs. Mary Poole Anderson.

Mr. Wolff:

The question has been raised, Your Honor, with respect to the inclusion of the documents in the name of Mrs. Mary Poole Anderson as those beirg not related to this case. At this time I will withdraw that exhibit with respect to Mrs. Mary Poole Anderson and introduce a ledger sheet in the name of Lewis T. Anderson with a copy of five invoices attached as Respondent's Exhibit BB.

The Court:

Any objection to that?

Mr. McNatt:

No objection to that document, Your Honor.

The Court:

It will be received.

(Respondent's Exhibit BB marked for identification and received in evidence.)

Mr. Wolff:

The parties also have agreed to stipulate to the testimony of Mr. John A. Anderson, were he here to appear and testify in person. This testimony would be as follows: "That he rented a brick building from Mr. Lewis T. Anderson commencing in 1943 for $12.50 a month. This building was located in Wrens, Georgia. The rental increased gradually over a nine-year period to $25 per month. This rent was paid to Lewis Thurston Anderson sometimes monthly, sometimes semi-annually, and sometimes annually.

Mr. McNatt:

No objection.

If the Court pleases, I would like at this time to call the author of Exhibit 8 for the purpose of cross examination. That is the schedule that was introduced on cross examination, which is the Government's computation.

Mr. Wolff:

I misunderstood you. Petitioner requests—

Mr. McNatt:

I wanted to call Mr. Orr, the author of this document.

Mr. Wolff:

You want to do what?

Mr. McNatt:

I want to call Mr. Orr for the purpose of cross examination.

The Court:
I understood this was put in evidence merely as showing the method that the Commissioner used.

Mr. McNatt:
No, sir, but I thought—

The Court:
It is merely to indicate how the Commissioner made his computation?

Mr. McNatt:
Yes, sir.

The Court:
Do you think under those circumstances you have the right to cross examine a witness?

Mr. McNatt:
I would think so, to examine where he got these figures, some of them. I might say the purpose of it is, some of them frankly we don't know where they came from.

The Court:
I think it is up to the taxpayer to take the burden or proof, it is up to him to disprove those figures.

Mr. McNatt:
Yes, sir.
If the Court pleases, one thing in here, the computations themselves and the securities show on their face that there were tax exempt securities involved in this case. I want to find out if he has eliminated for one

thing anywhere from this computation. Frankly, I cannot find it.

The Court:

I wonder if counsel for Respondent could not agree with you upon that. You of course have the right to call the witness as your witness any time you please, you understand.

Mr. McNatt:

Oh, yes, I understand.

Mr. Wolff:

I don't believe there is anything to show the receipt of interest from tax exempt securities at this point. I believe there was some testimony with respect to a holding of tax exempt securities. Before we get into that, Your Honor, this schedule is not subject to cross examination at the present time.

The Court:

I have so advised the counsel for the Petitioner.

Mr. Wolff:

I would stipulate at this time, Your Honor. One moment.

Your Honor, may we go off the record for just a moment? I want to see if we cannot reach an agreement here.

The Court:

Let us call a short recess for about ten minutes.

(Whereupon, a short recess was taken.)

Mr. McNatt:
Mr. L. T. Anderson.

Whereupon, L. T. ANDERSON, was called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk:
State your name and address, please.

The Witness:
L. T. Anderson, 400 Colorado Street, Augusta, Georgia. It was 300 Sand Bar Ferry Road at the time of the case. It is just around the corner now, same area.

Direct Examination.

By Mr. McNatt:
Q. State your age, please, Mr. Anderson.
A. I am well past fifty-eight.
Q. By the way, what do the letters "L. T." stand for?
A. The bankers nicknamed me "Little Tight."
Q. What is your real name?
A. Lewis Thurston.
Q. Why did they name you Little Tight?
A. Well, they all knew me well, if that is the right answer. They knew me well enough, and that is why they nicknamed me.
Q. You mean you are a little conservative?
A. They say I am. That is hearsay.
Q. Mr. Anderson, if you will, state the condition of your health.

A. Well, according to the information from the doctor, that is all I can state, and the fact that I have been down. I am getting along in the last stages of diabetes.

Q. When did you first learn of this condition of diabetes?

A. Well, the first I knew of it was in 1937.

Q. I believe you—this is a little leading, Mr. Wolff, but in the interest of saving time I think you will be agreeable—were born in Jefferson County, Georgia.

A. Yes, sir.

Q. That is down around Wrens?

A. Yes.

Q. You were born there and lived there the first part of your life, but most of your life you have lived in Augusta?

A. I came to Augusta in—I don't remember the date, but in December 1917.

Q. Can you tell me how much education you have had?

A. I had a high school education.

Q. After you finished school, what did you do?

A. Well, I was on the farm and I farmed on with my Daddy for a while. Then I went to Harlem, Georgia, with the idea of setting up a watch repair shop.

Q. About what year was that?

A. In 1917. But the outlook there was not satisfactory, so I went to Augusta and got a job with a Mr. Tannenbaum at that time. He was on 1154 Broadway, but later at 974 Broadway; same man, same job.

Q Did you work on a salary?

A. A salary.

Q. Can you tell me approximately when you quit that job and why you quit?

A. Well, I didn't quit it all of a sudden. I quit it in 1946, I believe is the time, the nearest I can remember. But I do remember positive that I stayed—made an agreement that I would stay off Monday, Tuesday, and Wednesday and go back Thursday, Friday, and Saturday so that all of the systems and records and the customers whom we had been holding watches over for parts during the war period and were beginning to get a few parts, so that I could get these jobs out and placed in the hands of the right customer. I felt like I would be doing a great injustice by not going back, but it was strictly against the doctor's orders. He wanted me to be out and work and walk around and get tired. My duties at the store were almost like setting here in Court so far as exercise is concerned.

Q. When is the first time that Mr. Orr contacted you; Mr. Orr, the revenue agent who made this examination?

A. About this tax business?

Q. Yes, sir.

A. Well, I will have to lead up to it just a little bit.

Q. Go on ahead and make any statement you like.

A. Mr. Ward, I believe his name was, came down to the house one day about eleven o'clock I reckon, ten o'clock—around there sometime, and wanted to see my 1944 tax books.

Q. About what year was this?

A. This was in 1947.

Q. In 1947.

A. In June. And I had company and I was snowed under with duties, so I told him I would be up there—I don't remember how long, but in a day or two, and bring my books with me. But it was no day or two

with him; we set an exact date at an exact hour, and I think it was two o'clock in the afternoon or maybe three. But it was on some exact date. I don't know, two days, three days, or maybe even the next day, see, but we didn't have no one or two days—I didn't tell him I would be up there in two or three days. We set an exact date. I don't remember exactly when it was.

I went up there and I was there and I talked to him and answered his questions, and we figured a little bit. I don't know what it was all about. In about thirty minutes Mr. Orr got into the case. He said something about he wanted to go over all my records and my books for all years. Then we got down to a conversation; no arguments or anything, just regular conversation.

Then he told me that to go into all these years—he was looking at tax returns, books, and whatever I had with me—he says, "If we make this investigation, we are going to have to have some help and you are supposed to furnish the help."

I say, "Who can I get?"

He said, "Well, you can get anybody you want to, but I tell you one fellow who knows his onions, and that is Mr. Hugh Bedingfield."

I didn't know him, but I think I saw him in the store a time or two. I would have hired George C. Baird for this reason: When I first lived in Augusta, I lived next door to George Baird. Me and him and his first cousin, his first cousin lived with him in the same house, and both of them lived next door to me. We went fishing at night with set hooks and we caught a lot of fish.

Q. Stay away from the fish and get to the material facts. What happened between you and the revenue agents?

A. I would be glad to. Now, I read in the paper just the other night, it seems like it was Thursday night, that a man took in so much money and was required to pay income tax. I went over to see Baird and he said, "You bring me that and the other and all the records and let me see."

So I went over and he said, "I believe you were supposed to make a return, but I don't know if you have to pay any tax."

So I furnished Mr. Baird with all he asked for, notes. I reckon you call them notes, things on plain pieces of paper. I was just using ten cent store books. I had some books along with me, but as I remember he sent me back and said, "I don't want no books, see. I want these facts."

As I remember, I went home and got them up for him and copied them off and gave him about eight or ten pieces of paper. And I went back and he looked them over and said, "This will be sufficient." And he says, "I will write you a letter or call you up." It seems like that was 1949 or 1950.

He called me a few days later or wrote, and I went by and signed the thing and sent it on in.

Q. You started off, and then got off on fishing trips, saying that Mr. Orr recommended that you hire Mr. Bedingfield. Is that what I understood you to say?

A. Yes, but I would have hired Baird if he had not said anything.

Q. You hired him on Orr's recommendations?

A. I was very friendly with and knew Baird from long ago, and I went to him on my own accord. And I would have went back when I had tax trouble if he had not recommended Mr. Bedingfield.

Q. Did you give Mr. Bedingfield power of attorney?

A. Well, I went to see Bedingfield. He came to see me about every day there for a while, it seemd to me, during 1947. The first week, I don't think I gave it to him in the first day.

Q. You have not said yet whether you gave him one.

A. I signed one in his office, if that is satisfactory information. If it is not, I will try to give it to you. It was not filled out. He just handed me a blank piece of paper. But it sort of stumped me, you know. "Power of attorney," I was not used to the term. He says, "This means only for tax purposes." He said, "Now I cannot go out and sell a piece of real estate for you."

Q. You are talking about he had a printed form and you signed that in blank and he was to fill in certain names and dates?

A. Whatever is necessary. Well, if I may say so, I signed something like that down at the bank in borrowing money and on common stocks, and they never fill it in. If they do fill it in, I don't know. In fact, I do know they don't fill it in because I go back and pay the notes three or six months later and it still isn't filled out. But it is a different looking thing from Mr. Bedingfield's.

Q. How did you and Mr. Orr get along? Did you cooperate with him?

A. Well, that is one thing Mr. Bedingfield told me. He said, "Don't you argue with him one bit, give him anything he wants because I know him; he is a personal friend of mine. You have a tax case against you—I am sure of that from what you tell me—and if you cooperate with him nicely on everything, he can make it easy on you." And he says, "I know him pretty good because I used to work in that depart-

ment," Tax Department or some other word meaning the same thing. And he said, "I know him real good, have known him for years."

Mr. Orr filled out my tax returns up at the post office. That name that you used, I think you accused me of being a little tight and have brought to the attention of the Court, Mr. What-cha-call-him charged me fifty dollars.

Q. George Baird charged you fifty dollars?

A. Yes, sir. And I made up them schedules, you know, about that taking off the percentage of depreciation each year—I made those up and took them up to the post office and got it done for nothing.

Q. And you did that for what years?

A. Well, I did that including 1946. I never skipped a return. I was there every year.

Q. Did you take Mr. Orr around and show him your properties and cooperate?

A. He never asked me. He did ask me to drive with him once.

Q. Did you go with him?

A. Yes.

Q. Did you furnish books and records?

A. Yes, sir.

Q. If you know, how long did he keep them?

A. Well, if he asked me for the books in 1947, I don't remember. If he did, I give them to him, see. But the way that thing happened, Mr. Bedingfield asked me for the books in 1947. I think I carried them to him the next day after I signed the power of attorney, see. And I took the books to Mr. Bedingfield. As I remember, there were four of them.

May I tell you why I have four books?

Q. Yes, tell us anything you want to.

A. Well, these people that I deal with are very rugged characters. By actual knowledge, not hearsay, I know that they are rugged, see. Fire is always at the will of God. I mean actual accident fire. And if at the time, any time, that anybody was to break in my house during my absence and steal one of my books or my records, it would mess me up with all clients and people that I deal with. So I was taught by Mr. Maxwell to change books every year.

Q. That is, you put each year's operation in a separate book?

A. Yes. Sometimes I use a book for two years.

Q. Go on ahead. You want to lay the background for something.

A. After I would change books, I keep one book in one place and another book in another place so that if something happened, a fire or maybe an accident or if I had a robbery and someone would steal my books—you had to keep very close track of these things.

Some of these folks I deal with—some of them are very good people and just as Christian-like and probably be in heaven the first ones, but they are poor; and others will do anything in the book. They have been known with furniture stores, the same people that bought my houses, to change the year. You know it is easy to take a "47" and put a tail on it and make it a "48."

The furniture store would come to me and ask me about this fellow because they were checking on their own collector, you see. He had the 1948 receipts, but the man had changed them. You see, it was really a 1947 receipt but they put another tail on it and made it 1948. Sometimes they would take a "3" and make an "8." Those people bought at the furniture stores

and never paid out. The furniture dealer would check and show me the actual papers. He would say, "Here is the receipt and my man has 1948, but he has 1947."

All right. They come to find out that some of the people who had bought my houses wre changing receipts for furniture stores. That got me a little scared, perhaps.

Q. I believe you are rambling a little in your testimony.

Mr. McNatt:

I might explain to the Court that Mr. Anderson asked permission to make a statement leading up to this examination. I was merely giving him the opportunity. He has got off on something else. I will not stop the Court from hearing this.

The Court:

Proceed.

By Mr. McNatt:

Q. I ask you if that is your 1940 income tax book.

A. Yes, sir.

Q. That is the book kept in the regular course of business?

A. Yes, sir.

Q. Is there any other year in there other than 1940?

A. I don't see any. I forgot how I done it exactly.

Q. May I have the book? I want to introduce it in evidence.

A. Yes.

Mr. Wolff:

Do I understand you are offering the blue spiral notebook identified with the tape on the front "1940 Income Tax Book"?

Mr. McNatt:

That is correct.

Mr. Wolff:

You are offering it as the actual books of Mr. Anderson in 1940?

Mr. McNatt:

At least part of the books. I am merely identifying this book at this time.

Mr. Wolff:

For identification?

Mr. McNatt:

No, sir; it is for admission in evidence.

Mr. Wolff:

I notice, Mr. Anderson, that there are some items in here for 1941, apparently a monthly summary. Would you tell me how this summary was prepared?

Mr. McNatt:

If the Court please, Mr. Wolff will have an opportunity to cross examine of these books. I believe we can move faster on the document itself.

The Court:

I assume that you were asking the question to see whether you could acquiesce in the introduction of the book into evidence?

Mr. Wolff:
Yes, Your Honor.

The Court:
Do you have any objection to that, Mr. McNatt?

Mr. McNatt:
No, sir.

Mr. Wolff:
I withdraw the question at the present time, Your Honor, and offer no objection to the introduction of the document.

The Court:
It will be received.

(Petitioner's Exhibit No. 23 marked for identification and received in evidence.)

By Mr. McNatt:
Q. I hand you a brown book with a Penmark trade name on the income tax sales book headed "1943 to 1945," and ask you if that is the book kept in the regular course of business.
A. Yes, sir, to the best of my knowledge that is the records. I could take that book especially at the time it belonged and get any information I wanted.

Mr. McNatt:
Do you want to see this, Mr. Wolff?

Mr. Wolff:
No objection, Your Honor.

Mr. McNatt:

I offer the 1943 to 1945 income tax sales book in evidence.

The Court:

It will be received in evidence.

(Petitioner's Exhibit No. 24 marked for identification and received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, I hand you another notebook type of book with a Penmark trade name on it marked "1946 to—" and the date is not completed there. I ask you if that is a book kept in the regular course of business?

A. Yes, sir. You can see where I had an index so I could get to the page quick.

Q. If you were paid some money, you could get it quick?

A. I didn't use that book, I had those books put away. I often used pieces of paper and put them in a pigeon hole in my desk to expedite it and transferred it to that book later.

Q. I see.

A. Sometimes I used the book; whatever was the most practical way at the time.

Mr. McNatt:

I offer in evidence the book just described, marked "1946 to—."

Mr. Wolff:

No objection, Your Honor.

The Court:
It will be received.

(Petitioner's Exhibit No. 25 marked for identification and received in evidence.)

The Witness:
I tell you when the diabetes was getting me down bad and the fellow came in and wanted to pay, why I sat down at the desk and wrote a receipt. Sometimes it would be three months or one month before I would post it in that book. I thought that it was a kind of double affair.

By Mr. McNatt:
Q. I show you a blue book, notebook type of book, trade mark "Prize Winner Composition Book," with the notation on it "1945 Income Tax Book," and ask you if that was a book kept in the regular course of business?

A. Yes, sir. There is one thing about this book that I might state; I don't know whether it would do any good or not. I got my daughter to make up this book from another notebook because the other one got ruined the grandbaby spilled some stuff and got it mutilated.

Q. The book got spoiled, and that is a copy of another book?

A. It was the daughter's baby. It was the daughter's grandbaby and—

Q. You mean it was your daughter's child, your grandchild?

A. I mean my grandbaby. I had two girls, and the girl that wrote that—

Q. Don't go into that.

A. My daughter wrote this, wrote these figures in here, but it was taken from another book just like it.

Q. From the one that got spelled?

A. Yes. So I made her copy the book; it was her baby, so I made her copy the book. That is why the handwriting does not compare with the other handwriting.

Mr. McNatt:

I offer in evidence the 1945 income tax book to which the witness has just testified.

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 26 marked for identification and received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, I notice that the 1947 book, I am unable to find it. What happened to that book, if you know?

A. 1947?

Q. Yes, sir.

A. I don't know what happened to it. I gave all the books that I had at that time to Mr. Bedingfield.

Q. What did Mr. Bedingfield do with them, if you know?

A. Well it so happened that the phone rang and he told a boy there who favored him very much and called him Winston, I believe, he told him to take these books over to Mr. Orr. And Mr. Bedingfield

did not see the books. He saw them like you see them and he turned through them and looked a little bit, but I don't think he ever tried to designate or figure anything. He didn't pay much attention to them, just casually looked at them and handed them to his son. And his son walked out the door. I stayed there another hour talking to Mr. Bedingfield about the case.

Q. Let me ask you this: Was the 1947 book included in there, in this group of books?

A. All I had was included in there.

Q. You would not say the 1947 book was in there?

A. I could not say.

Q. I hand you a notebook type of book marked "L. T. Anderson—1948 Realty Book," and ask you if that is a book kept in the regular course of business?

A. Yes, sir. The other did not have enough pages in it, so I got a little bigger book. But I bought the book, this is my writing up there.

Q. Did Mr. Orr or Mr. Ward or Mr. Spence or any of the Government men ever have this book?

A. Well, this ain't one of the books that was brought back to me three years later because, you see, they picked them up in June of 1947. It was not exactly three years, it was thirty-one or thirty-two months.

Q. They kept these books that we have previously introduced?

A. They kept all the books I give Mr. Bedingfield. I would not accept them because I did not give them to them. You know how lawyers are when the client won't behave himself. I would not accept the books because he might have got on my neck and said, "You should not have accepted the books he brought."

Q. The books were out of your possession. Is it your testimony that Mr. Orr brought them back to you?

A. He said he was not going to do it. He said, "Well, you got them from him." That is the first cross words I had with Mr. Orr. He laid them down on a piece of—well, I think it was a piece of stump or something out in the field. There was a warehouse in the field. He got in the car and left. There was two men with him. But I didn't talk to the other men, I don't know the two men. I know there were two men in the car.

Q. Is it not your testimony that Mr. Orr never had this book here?

A. No, sir.

Q. Did he ever take it?

A. In 1950.

Q. He got this in 1950?

A. I don't know what happened in 1950 concerning the actual book of this, that, or the other, but I know he brought them all back before he got to me. When he got me on the carpet in about two or three months, he brought all the books that he had back. I don't know whether it was all I give him or not.

Q. And he had had those in his possession for thirty-two months?

A. Those yonder, I know; and maybe one more. I thought there was one more.

Mr. McNatt:

I offer in evidence the record just described by the witness, marked "L. T. Anderson—1948 Realty Book."

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 27 marked for identification and received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, here is an exhibit that you brought into the room. If you would, I wish you would show what these exhibits are and what they were used for.

A. Well, the right lid to this is over in your or Mr. Spillane's room in a suitcase. I was scared to put it in here. I might want to use them again.

Q. Suppose we let that go to morning, then.

A. I think I have some of them here. The other lid is like that except with asphalt on it. These were what I used to bury some money. That was that.

And here is some of the tar I didn't clean off of it. I was not interested in the tar, I just wanted to get money out. The actual lid is in the little suitcase.

Q. You will bring that over and finish the exhibit in the morning?

A. Yes, sir.

Now this is not the actual can. You have to be awful careful that water does not get in and rot your money. This asphalt, you know, like they use for pavement in the road, I buy in one hundred pound sacks and break it up. It breaks all into pieces—it is like rosin, you know—and you have to put it in a dishpan and put it on the stove. And owing to the condition of my wife, I have to do it when she is uptown. You put in some water and put nails in the bottom. If you don't put nails in the bottom, you will scorch the stuff and ruin it, see.

Q. Yes, sir. Go ahead.

A. You put it as full as you can and then let the water up. You see, you can get the lid and rubber on (indicating).

Q. Show the Court. I know how to do it.

A. You have hot asphalt and nails on the bottom; just two or three nails to keep it from being in contact with the bottom of the dishpan. The flames from the stove won't come on all that water, but asphalt is very inflammable. When I first started burying jars I tried rosin, but some sources will deteriorate and you will have water in the jar.

So you put that asphalt in there like that (indicating) with the lid and all on it, and it coats it up to here (indicating). And you take it out and let it cool; let your pan stay on the stove. Sometimes I dip it down again and get a quarter inch thick on there and it can stay in the ground from now on even though the water rises in the earth. And when I dig it up, there is no water in the jar. We want the bills to be dry.

Do you want me to show how you put the bills in?

The Court:

No.

Mr. McNatt:

I think it is a very interesting operation. He showed it to me. It might be a little amusing, but it may be of some value later on.

The Witness:

I had more jars than these, but I just didn't bring them along. See, there is another one (indicating). Sometimes I use gallon jars. It will only take a minute to show you.

Mr. Cushman:

Can't we—

The Witness:

You get the bills from the bank just like that (indicating) and you take and roll them just like that (indicating), see. And you take a tiny little string, like a meat market string, and you see—This is $250. Five hundred dollars make a bigger roll. You put as much pressure as you can, make it as tight as you can get them. And then you lay the jar down, you see (indicating) if you want to take out a little extra $5,000, you can just open the lid of the jar and shake it and two or three different pieces come out.

I have never been successful in cramming them in like that (indicating). I have never been successful in doing it that way. You have to break the jar to get it out.

The Court:

You have to break the jar to get them out?

The Witness:

Yes. And if you will excuse the expression, I used toilet paper, see, and cram that jar just as full as I could because the moisture in there—this afternoon might be dense, and going down in the ground where the temperature is lower it might condense that moisture into water and make the bills damp. When I put my money in the ground I want it to come out as dry as this is. I cram the toiler paper in and push all the bills in, and you will have nothing but money and toilet paper in the jar.

The reason I do that is that I have been in so many bank breaks, near bank breaks. My Dad back in the Twenties before he died, he died in 1929, they took ten or fifteen thousand dollars from me. Of course I was skeptical about the thi. g. I had to put

up security, about ten or fifteen thousand dollars. And I had to hold a reserve open so the banker could not close them and went to pick cotton out there and paid it back.

But I have been so near bank broke, and they accused me of breaking a bank back in the Twenties. But I thought it was crooked and I told the banker that I investigated and found out what I told him was true, and it was about twenty-four hours later the bank closed. The mayor was president of it. They were going to sue me and everything else, but they didn't.

By Mr. McNatt:

Q. How much money would one of those jars hold, packed in the way you packed it?

A. Well, it depends how tight you draw that string. I have had $8,000 many times in one in twenty dollar bills. I never use only twenty dollar bills.

Q. Any special reason for that?

A. Well, you are liable to get in trouble if you– I understand the banks get you in trouble if you ask for one hundred dollar bills.

Q. I believe you are thinking about the war period some years later.

A. Well, I just never did fool with them big bills.

Q. I will ask you, Mr. Anderson, if you know, if you can approximate it, how much money did you have buried in the ground on January 1, 1941?

A. Well, I had over $20,000, about $22,000; but my estimate would be a guess because I go take out two or three thousand dollars at a time.

Mr. McNatt:

Let me have the bank statements of Mr. Anderson, please.

By Mr. McNatt:

Q. Mr. Anderson, this net worth statement, Government Exhibit 8, which has been introduced into evidence, indicates that you had a sizeable net worth all during this period, but your bank statements indicate you did not keep much money in the bank. I think you have partly explained why, but was it your policy to use banks or not use them?

A. Well I used banks, if I may put it this way, just as little as I could. But sometimes it is necessary to use banks, and I had to use them because I had to have open line credit for ten or fifteen thousand dollars. Sometimes I borrowed as high as $10,000, just walk in there and carry a plain note. I had to carry an account there; otherwise, I would not get that.

The class of men that I hired on those houses, from my own knowledge—I say just as close to my knowledge as I can—they owed everybody and their brother. I am talking about workers now. They just didn't want check one because the bank was having help with the girls at the windows, and when I went in the bank she would be quit and go got married or something or other, and there was nobody I figured would cash those workers' checks except their own personal grocery man and they might have owed him and did not want to go to him with a check, see.

And they would not even cash a check, the business people would not cash a check because they did not know if that was the right party or not. I can walk in most anywhere and my check will go through all right. But giving these fellows checks for work, and the materials had to be paid for in cash because the people I was buying from knew nothing about the O.P.A. ceiling price; and among the businessmen

there was so much construction as to what to sell it for, whether you were violating the O.P.A. or not. Nobody seemed to know, see. They just said, "We want the cash. We don't want any checks." Some places they give me nails and some place would not give me nails. I had to have nails.

Q. Is it your testimony you spent approximately $23,000 that same period from the ground that you had prior to 1-1-41, prior to this period?

A. Yes, sir, but I only took out two or three thousand dollars at a time.

Mr. McNatt:

I believe it is five o'clock. I might state to the Court on this exhibit here that I am sure the Court does not want to lug this box of empty jars to Washington. I would like to introduce one of the jar lids in the morning as merely a representative of the illustration that he was giving you a while ago.

Would Your Honor have us continue or adjourn until tomorrow morning?

The Court:

I am perfectly willing to continue for a while if you and counsel for the Respondent would like to.

Mr. McNatt:

I am perfectly willing. I had heard Your Honor previously indicate that we might quit at five o'clock.

Mr. Wolff:

I suggest we go on for a while.

The Court:

Let us proceed for thirty minutes or so.

By Mr. McNatt:

Q. Mr. Anderson, I refer you to Respondent's Exhibit J, which is a financial statement produced here by one of the banks, and ask you if that is your signature on it and that you submitted that statement to the bank.

A. I did.

Q. That particular statement, I believe, is dated 1-1-41, is that right?

A. Yes.

Q. I notice down here after listing certain assets you make the statement, "Assets inherited from father's estate not listed in this statement."

A. Well, they were not.

Q. What do you mean by that statement? Why did you leave them off?

A. Well, I will tell you. My family people all like a nest egg and I was overburdened with business, details, and was sick, too. I personally wanted to see how much money I was making, and if I go mix my father's assets in with that—

Q. Let us clear that up. Your father died in 1929?

A. Yes.

Q. What size estate did he leave?

A. Well, my part of it was about $14,000 or $14,500, I can't remember exactly. I left it all up to the Superior Court Judge who wound up the estate.

Q. What was the total amount of his estate, if you know, and how many people was it divided among?

A. Three people; my mother, my sister, and myself.

Q. Will you state their names, present names now?

A. Well, their names now are the same as then. Mrs. Mary Poole Anderson.

Q. That is your mother?

A. My mother. And Mrs. Ozzie Faglie.

Q. That is your sister?

A. Yes.

Q. How do you spell that?

A. F-a-g-l-i-e.

Q. Now it is your testimony that your father left somewhere between $14,000 and $15,000 apiece to each of you?

A. Yes, sir.

Q. What form of assets did he leave it in?

A. Real estate, county warrants, and cash.

Q. Is some of that cash represented in this money that you were talking about in the ground?

A. No, sir.

Q. You didn't bury any of that?

A. Yes, sir. I buried that in a different place.

Q. In different jars?

A. In different jars. I never kept very much buried in any one spot.

Q. What was the idea of having different burial places, a burial graveyard of money you might say?

A. I will tell you why I did it. I usually go hunting —I don't like to hunt, but I usually get that sack and put on hunter's clothes and go into the woods. You see, all laying around there are markings, nitches on trees, and I go to a certain tree and get out fifteen foot to the east. I usually pick out a tree that is about on the line. There is straw on the ground, so I rake back the straw and dig my hole. I never know about these zinc tops, whether they are going to deteriorate on me or not. I have never had one to do it, but you don't know when a flaw will come in, so I goes to the store and buy mixing bowls made out of glass that come right straight up and I use that Clarke grave method.

Q. I believe you are getting into too much detail.

A. I was just going to tell you how I did it. I have to make it clear, I hope.

Q. Go ahead.

A. I put the jar down in the ground and the jar lid fits right down on it and no water will come up. It is the same method as the Clarke grave vault, how an undertaker does that so no water can come up into a vacuum. The money is what I was trying to protect, not the lid. Then I put the dirt back around there. I always take a can of sardines and pork and beans and a little skillet. Then after I put the dirt back, see, and get everything ready to leave, I have a new place of dirt and that is liable to cause somebody to be suspicious and get a shovel and go to dig it.

But I try to let nobody see me there. I build a big fire out of straw and I carry with me a piece of bacon and a loaf of bread. I open the can of sardines and pork and beans and warm them up on that. I burn that straw up, and I actually eat the pork and beans and put out all the fire good. But I have concealed that new soil and it looks like where—I throw the cans out so that a fellow can see them—someone stopped and made him up a fire and went on. The dirt is packed good so he won't bog if he walks across it, because there is a direct suspicion if it bogs.

Q. Mr. Anderson, I further direct your attention to this Exhibit J and this statement on the bottom: "If my credit was to snap suddenly, I think I could pay up all I owe in a few hours in a business day." What does that mean? Standing alone that has no meaning to me.

A. I would go, if possible, and get some of this money out of the ground and go pay any debt if somebody called on me. I had that to happen.

Q. And that is what you meant by that statement?

A. I have had that to happen one time in my life.

Q. Let me ask you why you did not put your twenty or twenty-two thousand dollars or whatever you might have had on this statement as being the cash buried in the ground as assets?

A. Well, I didn't think I would be an honest man if I listed some assets in the form of cash or any other assets. I wanted my money to be paid to the bank like it ought to be after I was six foot under the ground, see.

Q. Well, now, let us say that you did go six foot under the ground. Did you leave any notice or anything where your family might find this money?

A. Yes.

Q. Tell the Court what you left and how.

A. Well, I gave instructions for something or other to be done at a certain point, see. I would not like to state that because I am still using it.

Q. You are still using the same system?

A. Yes, and when this heir to my estate goes and finds that, see, and follows the instructions, when they get to another point he will open up the whole thing because every piece of money that I ever buried was buried fifteen feet direct east from a certain tree, fifteen feet direct east by compass. Or if the sun is shining in the morning, be just as good.

I just didn't figure that money under the ground would be something to pay debts with. My children at that time were quite young and these son-in-laws and children won't let them pay the debts, and I really wanted my debts to be paid.

Q. Mr. Anderson, I show you Petitioner's Exhibit 17 which Mr. Wolff and I have stipulated as being the correct amounts and as being in agreement with the revenue agent's report. I ask you, if you know, who owned those securities listed on that statement and in whose name were they registered? Where did the money come from to get them or anything else that you might know about?

A. These top ones belonged to my mother, and the bottom ones belonged to my sister.

Q. Mr. Anderson, you have previously reviewed that statement with Mr. Spillane and have reviewed the documents and so forth. You have seen that before. The Schedule A is headed "Investments and Securities for Mother and Sister." I ask you if your mother and sister owned these securities and not you?

A. They actually owned them. I might say that I think my sister owns some other securities that is not listed on here, but I don't know why. I don't suppose anybody ever asked for them.

Mr. Wolff:

I object to the line of testimony. The ownership is the mother and the sister.

Mr. McNatt:

If the Court please—

The Witness:

These do belong to my mother and sister.

Mr. McNatt:

Wait just a minute.

If the Court please, the evidence introduced in here shows that these stocks were registered in the name of his sister and his mother. For some reason, which we have never been able to ascertain, they were included in Mr. Anderson's net worth.

The Court:
I think he can testify they do not belong to him.

Mr. McNatt:
Yes, sir.

The Witness:
Well—

The Court:
He ought to explain if he had any connection with them at all.

Mr. McNatt:
That is what I asked him to do, whether or not he owned them and what he knew about them.

Mr. Wolff:
I understood the testimony of Mr. Anderson to be that the stock was owned by the mother and father. That testimony is being changed at this time by the Petitioner's attorney.

Mr. McNatt:
His father died in 1929.

Mr. Wolff:
His mother and sister owns them.

Mr. McNatt:
That is right.

The Witness:
They are now or were at one time owned by my mother and sister, just as you have it here, but my sister may have owned another little piece of stock that is not listed here, might own two more pieces. I don't know exactly what, as I do not keep up with it.

Mr. Wolff:
I object to this statement, and I move that it be stricken from the record, with respect to its being owned by the mother and sister.

The Court:
Mr. McNatt, I wonder if you would not question the witness and make the testimony more direct.

Mr. McNatt:
Yes, sir.

By Mr. McNatt:
Q. Mr. Anderson, you have reviewed this list.

Mr. Wolff:
I think there is a motion to strike this opinion.

The Court:
Perhaps Mr. McNatt can show that this witness does know to whom they belong.

Mr. McNatt:
I will go a little further.

The Court:

I thought I would wait to pass on that until he has further questioned the witness.

Mr. Wolff:

Yes, Your Honor.

By Mr. McNatt:

Q. Mr. Anderson, did you handle the investments for your mother and sister?

A. Yes, sir, I did.

Q. So as long as stocks that they had that came through you, you would naturally know about it?

A. Yes.

Q. I ask you if you owned the stocks listed on this schedule.

A. I never owned any of them.

Q. Do you know who did own them?

A. My mother at the top and my sister at the bottom. I acted as agent for them. The broker that sold them to me knew I was buying them for my mother because I told him so. Would you like to know why I told him?

Q. No.

A. Well, I just wanted to give you what you wanted to know.

Q. I will be glad if you want to make the statement. Go ahead.

Mr. Wolff:

Objection, Your Honor. Petitioner is apparently zealous in his case and wants to put it forward and to explain to the Court his position. I understand that, but I do feel on direct examination that the question should be propounded to him rather than allow him

to make free statements every time one question is asked.

The Court:

The Court was inclined to allow the taxpayer to make a statement, but I believe that it would be preferable if you would ask the questions and let the witness answer.

Mr. McNatt:

Thank you, sir.

At this time I offer in evidence Petitioner's Exhibit for identiciation No. 17.

Mr. Wolff:

I am not sure as to what you mean. Are you offering it in evidence at this time?

Mr. McNatt:

Yes, sir.

Mr. Wolff:

Objection is made, Your Honor, inasmuch as it has not been shown the schedule itself is investments and securities for his mother and sister. There has been no testimony at all or evidence to show that these were investments for the mother or sister.

Mr. McNatt:

If the Court please, these amounts are in agreement with the revenue agent's report. They are included in the net worth, and Mr. Anderson stated he did not own them.

The Court:

Why couldn't this be received with the Commissioner's reserving—that is to say, the Commissioner does not admit that the evidence proves that these belong to someone else?

Mr. Wolff:

Certainly no admission of proof on that basis, Your Honor. The objection will be withdrawn.

Mr. McNatt:

You do not object to the exhibit now? I believe the exhibit was that Mr. Anderson did not own these securities.

The Court:

It is admitted in evidence.

(Petitioner's Exhibit No. 17 was received in evidence.)

Mr. McNatt:

The Court is further notified that the Government has previously submitted evidence showing that these transactions in some of the instances were for the mother.

By Mr. McNatt:

Q. I ask you if you furnished any of the funds that went into the purchase of those securities for your mother and sister of your own funds.

A. No, sir, I did not.

Q. All investments bought for them were bought with their money, furnished to you, is that correct?

A. That is right.

Mr. McNatt:

Respondent's Exhibit F, if the Court please, shows in her name securities for Mary Poole—and Anderson is left off for some reason—and Ozzie Faglie, the two people we are talking about. The Government shows that to be true.

Mr. Wolff:

I believe Petitioner's counsel misunderstood the agreement of evidence, but I will keep that until briefs.

By Mr. McNatt:

Q. Mr. Anderson, I direct your attention to Petitioner's Exhibit for identification 14 and ask you if you are familiar with the loans stated thereon and if you have previously reviewed these loans?

A. Yes, I have looked over this before and studied it. I think it is right and—

Q. Let me ask you, did you own those loans which were included in your particular net worth?

A. No, I didn't own them.

Q. If you know, who did own them?

A. These were my mother's.

Q. Now were they registered in your name or hers?

A. Well, can I tell you how I done that?

Q. First answer the question and then explain why.

A. They were registered in my name.

Q. Why in your name?

A. Because I could not get her to go to sign a paper right to release them, and my lawyer suggested that I just make them in my name and transfer them to her, and then she would not have to make a special trip to Wrens and go through a lot of red tape at

night to try to hunt up a notary public. I was working in the day time. So the lawyer that I was using at that time suggested this method, and I used it down through the years in other cases, except these two. I didn't know any better, because he said to do it.

Q. It is your testimony these were not your loans?

A. They are not; never was.

Q. When you collected money, did you credit your mother's account for them?

A. Yes, sir.

Q. Did you do the same thing on the stocks?

A. Yes, sir, except where I sent her the check itself. The stocks were all in her name. A lot of those checks come to my mail box and I sent them on to her, see, but these loans were paid to me; I mean the interest and the money, and so then I account for it but I accounted for my mother every bit of the money I got in there that belonged to her. Those checks that come direct, I mean with her name, I mailed on to her.

Mr. McNatt:

I offer in evidence Petitioner's exhibit for identification No. 14.

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 14 was received in evidence.)

By Mr. McNatt:

Q. I show you Petitioner's Exhibit No. 15 for identification headed "Security Deeds for Mother and Daughter." I might state that these items have been included in your net worth. I ask you who owned those deeds.

You have previously reviewed this statement?

A. Yes.

This bottom one belonged to my daughter and the top ones belonged to my mother, but I handled the entire transactions.

Q. Who furnished the money?

A. My mother and daughter.

Mr. McNatt:

I offer in evidence Petitioner's exhibit for identification No. 15.

Mr. Wolff:

No objection to it, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 15 was received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, I show you Petitioner's exhibit for identification No. 16, being described the same as the other document that we just introduced, except the security deeds of mother and daughter in Akin County, South Carolina, and ask you if you owned those securities included in your net worth statement.

A. I have seen this statement before, looked it over carefully, and I did not own those—didn't pay for those with my own money. In other words, I loaned this money for my daughter and for my mother.

Q. Who furnished the money?

A. They furnished it, every one of them. It was their money.

Mr. McNatt:

I offer in evidence Petitioner's exhibit for identification No. 16.

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 16 was received in evidence.)

Mr. McNatt:

Your Honor, I believe that completes that type of examination of securities of other people.

The Court:

This seems to be a good point at which to adjourn.

Mr. McNatt:

I don't mind to go on, but as to the Court's previous suggestion as to time—

Mr. Wolff:

I believe it would be a good idea to recess for the evening.

Mr. Cushman:
Just a minute.

The Court:
I believe tomorrow morning we should convene at nine thirty for purposes of another case, but this case will come on perhaps at ten, is that right?

(Discussion off the record.)

The Court:
We will recess until ten o'clock tomorrow morning.

(Whereupon, at 5:30 o'clock p.m., a recess was taken until 10:00 o'clock a.m., Friday morning, October 14, 1955.)

(Title Omitted.)

Hearint at Columbia, South Carolina.

Date October 14, 1955.

United States Courthouse,
Columbia, South Carolina,
Friday, October 14, 1955.

The above-entitled matters came on for further hearing, pursuant to recess, at 10:00 o'clock a.m.

Before: Honorable Craig S. Atkins.

Appearances:

E. C. Cushman, Jr., Esq., L. E. McNatt, Esq., and T. R. Spillane, Esq., for the Petitioner

Herman Wolff Jr Esq. for the Respondent.

Proceedings.

The Clerk:

We will now resume with the Anderson cases, Docket 35385 and Docket 35386.

Whereupon, L. T. ANDERSON, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Direct Examination (Continued):

By Mr. McNatt:

Q. Mr. Anderson, I hand you Petitioner's Exhibit for identification No. 18, being captioned "Sales of Rental Property and Unimproved Land." You have

previously reviewed that statement, I believe. There is one for each year if you want to glance at it for just a minute.

A. Yes, sir, this is correct.

Q. I ask you if you held this property for investment and rental or for resale when it was built.

Mr. Wolff:

Objection, Your Honor.

The Court:

Excuse me. What was the question?

Mr. McNatt:

The question was, Your Honor, did he hold this property as investment property and rental property, or did he hold it for resale?

The Court:

What was your objection?

Mr. Wolff:

I think that is a pure conclusion on the part of the witness, to state whether or not it was held for investment. It is purely a leading question. Let the Petitioner testify as to what he did with the property, why he did it, and when he did it. That seems to be sufficient rather than to ask, Was it held for investment?—purely because the Court will be called upon to determine this question in the findings and decision.

Mr. McNatt:

I do not think the Petitioner's absolute knowledge of the fact is ever a conclusion.

The Court:
I think the witness has a right to testify as to what his intention was, and then the other facts will be taken into consideration in determining whether it was in fact—

Mr. McNatt:
I think that is correct, Your Honor.

The Court:
So I think your question should be reframed.

By Mr. McNatt:
Q. Mr. Anderson, please explain to the Court how you acquired this property, when you acquired it, and the purpose that you acquired it for.
A. Well, it was all acquired for rental property.

Mr. Wolff:
Objection, Your Honor. He has handed the witness about seven pages there and it has around one hundred pieces of property on it. I do not believe he can go in and say, well, why did you acquire this property?

Mr. McNatt:
I withdraw the question. It is going to take quite a while.

By Mr. McNatt:
Q. You will notice from this that you acquired 822 Chaffe Avenue in 1940 and sold it in 1942. Was that property rented during this period?
A. Yes, sir.

Q. And the South Carolina property was identified here as the Z Asbell property in Druid Hills acquired in 1935 and sold in 1942. Was that property rented during the intervening years?

A. Yes, sir.

Q. I think I can shorten this. On the pieces of properties listed on here, each showing the date it was acquired—the date and the selling price has been stipulated between us and the Government—if I ask you as to each individual property appearing on Petitioner's Exhibit 18, would you testimony be the same?

A. Yes, sir.

Mr. McNatt:

If the Court pleases, I offer in evidence Petitioner's exhibit for identification No. 18.

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 18 was received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, will you tell us under what conditions you sold this property?

A. Just sell it to anyone that wanted to buy it, if he had any money. Sometimes I sold it without any money.

Q. Did you solicit them or did they solicit you?

A. Most every case they come to me or their brother-in-law or sister, some family connection.

Q. That is, somebody in the neighborhood wanted a relative or friend to move in the neighborhood?

A. Sometimes I paid a commission to somebody outside of the agent. He said, "I will sell that house if you give me fifty dollars." But he was not an agent. He was sometimes a brother-in-law.

Q. Mr. Anderson, I wish you would explain to the Court why you did not file a 1947 income tax return and what you did towards preparing to file the return and why it was not ultimately filed.

A. Well, I carried the papers in January, just like I have been carrying them to the post office, except some minor change—

Q. You say you carried the paper. Where did you carry it?

A. To Mr. Bedingfield, up in his office. About the third floor of the Masonic Building, I think. I carried the papers just like I had been carrying them to the post office. He did not examine them carefully but glanced through them and said, "If I need additional information, I will phone."

Q. Had you previous to this time given him power of attorney that you testified to yesterday?

A. What I am telling you. I got this land in January 1948 and I gave him this power of attorney in June 1947. I saw him I reckon a dozen times to see if I was lined up on keeping my records like I wanted.

Q. What did he tell you?

A. Most every case when I questioned about anything this way, I was doing it right about keeping my records.

Q. What did he tell you about returns?

A. He told me, "I will take care of it. We have till March 15 to make it, and I will take care of it." I saw him again sometime along then and he says, "I will

take care of it." He says, "We have been overrun with business and I will get an extension"—or done got an extension, words meaning "extension."

I saw him in July down in front of the bank, think it was July, and I say, "How about that return?" I felt like I owed a considerable amount of money, and I was a little short and I wanted to have that money ready so I could go in and pay, you know, without waiting a month or two.

So he says, "I heard from Orr and Orr is supposed to be here in a week or two, and I want to wait until he gets through with his work so I can see how to fix certain things in this thing; you know, how to fix the return." I didn't know what he was talking about, but I accepted it as correct and went on.

Q. Did you subsequently make a deposit of $10,000 for the Government to cover whatever deficiency might have been on the 1947 return?

A. Yes, sir.

Q. Is that deposit still up?

A. Yes, sir.

Q. Mr. Anderson, I show you Respondent's Exhibit AA, being the 1948 return, and refer you to the schedule inside. The schedule lists a number of houses and the sales price which you have reported here on the installment basis.

A. Yes, sir.

Q. I ask you if you intended the reporting of these sales in this way, that you were trying to make an election on his advice on the installment basis for 1948.

A. Yes, sir, I did.

Q. You discussed that with Mr. Bedingfield?

A. Yes, sir, I did.

Q. And he advised you to make an election of the installment basis for 1948?

A. Yes, sir; and I thought I did. But I didn't know how to fix it. I left it up to him.

Mr. Wolff:

Your Honor, Petitioner's counsel in questions like the last, it is so leading it would seem to me he could ask questions that elicit the information from the Petitioner without testifying for him, in effect.

Mr. McNatt:

I think really the document speaks for itself.

Mr. Wolff:

Well, let the Petitioner testify as to what he intended by that.

The Court:

Mr. McNatt, Mr. Wolff is right on that. I wish you would try to keep the questions from being leading on your examination.

Mr. McNatt:

Yes, sir.

By Mr. McNatt:

Q. Now, Mr. Anderson, with particular reference to the years 1945, 1946, and 1947, did you report on your return the sales of all property?

A. I reported the post office off of the figures and all, off a sheet of paper, and I didn't read the return when I signed it. I was just sitting there, me and him at a desk. I reported everything, just what I done, and I signed whatever he pushed at me; paid

whatever tax I was supposed to pay, I thought. Whatever he said to pay, I paid.

Q. Why didn't you report these sales? You must have had a reason. You must have explained something to him.

A. Well, I did.

Q. Why did you not report the sales?

A. Well, I thought he wrote down what he wanted to or what was necessary. I reported them to him and to the different agents that made them out. Well, people made them out some of the time. He was a Government tax man.

Q. Didn't you tell me that you had discussions with somebody as to how to report these sales where the paper was not very valuable?

A. That was Mr. Maxwell, Bert Maxwell. He told me to go ahead and report it. I reckon he used the word "elect." He told me to work it on a plan where you get your money back and then report on the profit, or "pay on the profit" I believe were the words he used. And that was what I was trying to do. I was trying to tell that to the man at the post office. But I signed whatever he pushed at me after explaining, answering all the questions, giving him all the information he wanted to know. I had it there, I could tell him anything he wanted to know.

Q. Mr. Anderson, I hand you Petitioner's exhibit for identification No. 19, headed "Houses Constructed for Rental," and ask you if you have previously reviewed that shcedule.

A. Yes, sir, I have.

Q. I wish you would explain to the Court the 334-336 Sand Bar Ferry Road property; when you acquired it, how long you held it, what purpose you held it for, and why you sold it.

A. Well, I acquired it, I built the house before I took title to the land because I could not get a surveyor. That was about 1942, and I rented it on up till the date of sale. I think the date of sale was 1947, sometime in 1947. I have records to show the exact date of sale but have not got them in my pocket, see. Now, 338 was the same thing.

Q. Maybe I can shorten it this way: That is, your testimony concerning all the houses appearing on there would be the same, in general, as to when you acquired it, what you held it for, and why you sold it?

A. Yes, sir. There was some right down here that was built possibly a year later, the last ones.

Q. The schedule will show what dates.

A. I beg pardon, Your Honor. I don't know, but I wanted to be sure I put it right. And down here was built toward the last. These were the first ones (indicating).

Q. I see.

Mr. McNatt:

If the Court please, I offer in evidence Petitioner's exhibit for identification No. 19.

Mr. Wolff:

No objection.

The Court:

It will be received.

(Petitioner's Exhibit No. 19 was received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, I show you Petitioner's exhibit for identification No. 20, headed "Houses Constructed

for Sale." You have previously reviewed the schedule. I wish you would refresh your memory on it for a minute.

A. Yes, sir, that is right.

Q. This Bedingfield here is Hugh Bedingfield, but it is not the same Bedingfield. It is another Bedingfield.

A. I just want to make it clear, they are two different fellows altogether.

Q. Now, what was the purpose of constructing these houses? What were they held for, if they were held? Exactly, take 398 Orange Street there. Tell us what happened on this house.

A. It never was rented.

Q. What was your purpose in building it when you built it?

A. I wanted to sell that pasture for the most money I could get out of it, and that is the route I took.

Q. So these particular houses were built for sale to customers?

A. Yes, sir.

Q. Is that the only houses that you ever built for sale?

A. I believe it is. The only ones I ever built anywhere, any time.

Mr. McNatt:

If the Court pleases, I offer in evidence Petitioner's exhibit for identification No. 20.

Mr. Wolff:

No objection.

The Court:

It will be received.

(Petitioner's Exhibit No. 20 was received in evidence.)

Mr. McNatt:

I wish to have this marked Petitioner's Exhibit 28, marked for identification.

(Petitioner's Exhibit No. 28 marked for identification.)

By Mr. McNatt:

Q. Mr. Anderson, I show you Petitioner's Exhibit 28 for identification, being a series of invoices showing Accounts Payable outstanding in the years 1946, 1947, and 1948, and ask you if you received those records in the regular course of business?

A. Yes, sir. Yes, as I received anything else.

Mr. Wolff:

Your Honor, that is leading again. I think the question should have been, "How did you receive these records and under what circumstances?" not "Did you receive those records in the regular course of business?" I think the Court is entitled to know how they were received and when.

The Witness:

By mail, I think.

The Court:

What are these invoices?

Mr. McNatt:

Regular invoices, Your Honor, showing Accounts Payable outstanding at the end of certain periods.

The Court:

Accounts Payable of this taxpayer at the end of the year?

Mr. McNatt:

Yes, sir.

The Court:

You do not move to strike; you are objecting to the line of question, is that right?

Mr. Wolff:

I did not want to move to strike. Your Honor. I mean I think it is a leading question, and I think it should be brought out in a different manner just how these records were received and when they were received.

Mr. McNatt:

Let me try again, Your Honor, please.

By Mr. McNatt:

Q. Mr. Anderson, will you explain how you received those records, when you received them, and the conditions you received them under?

A. Well, I think I got them all about the first of the month, of the year—or just like any other statement. Maybe two or three days late, something. I got them in the mail.

Q. Let us take one particular invoice here. Explain what that invoice dated January 3, 1947, is, for that statement.

A. Mr. McNatt, I just would not know. It says "Balance Due" but I paid it. I knew at the time. I

got some papers, you know, showing what it was. I will tell you what it was. It was plumbing.

Q. Plumbing for what?

A. These houses that I was selling. Just whether it was a bath tub or toilet, I just would not know at this late date.

Q. I ask you if you owed that money.

A. I did.

Q. At the end of the year?

A. I did, and I paid it.

Q. I show you Petitioner's exhibit for identification No. 21, which is a tabulation—you have previously reviewed that?

A. Yes, sir.

Q. —a tabulation on these invoices, and ask you in your opinion if that is the correct amount of Accounts Payable as reflected by those invoices.

A. Yes, sir. I looked it over carefully.

Mr. McNatt:

I offer in evidence, if the Court please, Petitioner's exhibit for identification No. 28, being a series of invoices.

At this time also, if the Court pleases, I offer into evidence Petitioner's exhibit for identificaton No. 21. I thnk Mr. Wolff wants to—

Mr. Wolff:

Mr. Anderson, in Petitioner's Exhibit No. 28 for identifcation, n the group of invoices there are included three invoices from the Barton House Wrecking Company. Each one of these is dated, respectively, December 31, 1946; December 31, 1947; and December 31, 1948. Would you explain to the Court when you received those records?

The Witness:

Well, right about the time the date was on them. Sometime they come in two or three days late.

Mr. Wolff:

How can you be certain when you received those records, those invoices?

The Witness:

I know all the invoices of this nature, I get practically all the invoices by mail unless it is a c.o.d. affair where I bought some nails from a fellow on the project out in the field.

Mr. Wolff:

Is it not true that these invoices that you hold in your hand from the Barton Home Wrecking Company were received at the same time?

The Witness:

No.

Mr. Wolff:

Your Honor, I would like to show to the Court these three invoices. From the handwriting and the texture of the paper it appears obvious that the invoices were prepared by the same individual, the same type handwriting, the identical hand writing, submitted at the same time. One individual would not have the same handwriting for three consecutive years.

I also feel that it is up to the Petitioner to prove the Accounts Payable to bring the individual in to show what accounts were due on those dates. It is purely hearsay testimony. Obviously the invoices were prepared at the same time.

Mr. McNatt:

I think that is a conclusion. Mr. Anderson has testified that those were records kept in the regular course of business, and they are admissible in evidence.

The Court:

As I understand it, these purport to be the balances due by this taxpayer to Barton House Wrecking Company as of the end of each of the years 1946, 1947, and 1948; and the same with regard to the amounts owed by this Petitioner to Norris & Foreman as of the end of each of those years. The taxpayer has testified, I believe, that these were bills sent to him—or at least a statement of his account—at the end of those years. Is there anything to back up these statements and show the individual bills that were presented during the course of those years?

Mr. McNatt:

I believe one or two of those places are out of business. We have a statement here made at the time with which we are—pardon me for talking with my back turned.

Mr. Wolff:

It is submitted that the statement they are referring to is just as much hearsay as the documents they are attempting to introduce in evidence.

Mr. McNatt:

As I understand, books and records kept in the regular course of business are always admissible. The taxpayer has testified to something that is within his personal knowledge. It is not hearsay. There

might be some doubt as to the weight of the evidence of the invoices, but the testimony that he did offer this money at the end of the year is not hearsay, it is direct testimony.

The Court:

It is a matter of weight.

Mr. McNatt:

I think that is correct, Your Honor. If the Court pleases, I want these documents in evidence. I believe I previously offered them.

Mr. Wolff:

It is obvious that these records are not entries in the regular course of business, whether they were made by either of the companies or made in the regular course of business by the Petitioner. They are invoices that were brought into the Courtroom ostensively to show that they are Accounts Payable of the Petitioner. They are purely hearsay, no question about it. The Petitioner has testified they were received in the regular course of business, but they are hearsay with respect to the people who submitted them.

The Court:

Any evidence regarding the books of the companies involved there—or are there any details, individual bills, that have been sent to this taxpayer?

Mr. McNatt:

Some of these are individual bills. Some of them are year-end statements. Others are individual bills. Being they were received by the Petitioner in the

regular course of business and being he has testified directly that they were, and that these amounts were sent out, I do not see how it can possibly be hearsay.

Mr. Wolff:

There is always a question of identification. There certainly should be someone from these companies to identify these invoices as being invoices sent out by those companies in the regular course of their business and that these were entries made by those companies in the regular course of business. There is no way of identification by the people who sent these invoices out; it is purely hearsay.

The Court:

That likewise goes to the question of credibility and weight of it. The taxpayer testified he has received them. It is a question of whether the Court believes that.

Mr. Wolff:

Your Honor, may I state the documents have not been identified by the people who prepared them?

The Court:

That is true. Is it not true that anything that the taxpayer received in the ordinary course of his business in the way of bills can be introduced if he states it was so received?

Mr. Wolff:

No, Your Honor, I don't think so. I think the bills have to be identified by the individuals who prepared the documents.

The Court:

What do you say to that, Mr. McNatt?

Mr. McNatt:

If the Court pleases, that is a new law to me that I have never heard. It has been my understanding that anybody can testify to anything within their personal knowledge, providing it is relevant, of course, to the case. If Mr. Wolff knows of a law contrary to that, I would like to see it.

The Court:

You mean the taxpayer could testify as to how much he owed on a certain date at the end of a certain year if he remembers?

Mr. McNatt:

Yes, or if this document refreshes his memory. This is a net worth case, Your Honor, and the net worth statement is to accurately reflect income. Of course, it has to be correct. Now I admit, I could not testify to these invoices. They are hearsay to me, but as to Mr. Anderson they are not. He has testified directly on them.

The Court:

What is your purpose in putting them in evidence; your evidence was proof of the fact rather than for refreshing his recollection, was it not?

Mr. McNatt:

No, sir. I have him putting them in evidence to establish that at the end of certain years there were certain Accounts Payable outstanding which have not been reflected on the net worth statement. Mr.

Anderson has testified that he owed this money at this time. Now I am willing to concede there might be some doubt as to the weight to be accorded his direct testimony, but there cannot be any doubt as to the admissibility of it.

Mr. Wolff:

Your Honor, he states he is submitting it for the proof of the contents of the documents themselves. That is exactly what he is doing.

The Court:

This is a bill submitted by the company, is that your point?

Mr. Wolff:

He states they are bills submitted by the company. I do not know if they were submitted by the company or not. I do not know where they come from, where they were issued, or why.

The Court:

Are there any initials on there of anyone?

Mr. Wolff:

No, Your Honor. I might state, Your Honor, we endeavor to stipulate some of these items here. Now I have received in the regular course of my business this morning with respect to the account of Barton House Wrecking Company as of December 31, 1947—

Mr. McNatt:

I object, if the Court please. The document is not in evidence.

Mr. Wolff:
I can read from anything I want to read from.

Mr. McNatt:
I think that is up to the Court.

The Court:
So long as it is not in evidence—

Mr. Wolff:
I received in the mail this morning from the Barton House Wrecking Company the invoice of December 31, 1947, which states that there is a balance due of $2,108.85. In my regular course of business I have a letter which states that there was a book of that company which indicates a balance as of December 23, 1948, of $168. And I think that these companies should be required to come in and state just exactly—

The Court:
What are you saying, that you have a letter?

Mr. Wolff:
Yes, Your Honor.

Mr. McNatt:
Who is the letter from, your brother?

Mr. Wolff:
M. A. T. Young, Group Supervisor of the Audit Division in Augusta, Georgia.

Mr. McNatt:
That is a letter from an employee of the Federal Government.

Mr. Wolff:

I think that should even go more to the credibility of the document that has been received, Your Honor.

The Court:

I am not sure I understand your point. Is it your point that anything that you receive, that the taxpayer receives, cannot be put in evidence except on identification of the person that mailed it?

Mr. Wolff:

Not as to the identification of the document, no. That certainly cannot be submitted for proof of the contents.

The Court:

Well, the correctness of the amount stated?

Mr. Wolff:

Yes, Your Honor.

Mr. McNatt:

If the Court pleases, I hate to reiterate the same fact, but Mr. Anderson has testified that this was received in the regular course of business and that these amounts are outstanding. There is a world of Mr. Anderson's records in here already. He is entitled to introduce his entire records if he wants to. And as I say, it may go to the weight but it does not go to the admissibility.

The Court:

I agree with Mr. McNatt. It will be received. I should say that there is considerable doubt about the weight being accorded. It might be well to substantiate it some other way.

Mr. McNatt:

If the Court pleases, I move to strike what Mr. Wolff read into the record, being a letter from an employee of the Bureau of Internal Revenue and not a letter from the Barton House Wrecking Company.

The Court:

That will remain in the record. Whether it is stricken or not, it will not be considered by the Court.

Mr. McNatt:

Thank you, sir.

The Clerk:

Are Exhibits 21 and 28 admitted?

The Court:

Yes, sir, they are admitted.

(Petitioner's Exhibit Nos. 21 and 28 were received in evidence.)

Mr. McNatt:

If the Court pleases, I have here now Petitioner's exhibit for identification No. 22. This schedule is submitted merely to assist the Court. In case they decide that these notes were not face value, the notes naturally would not be considered. This schedule is headed "Deeds to Security Debt, Not the Result of Real Estate Sales." In other words, they are direct loans. They are in agreement with the revenue agent's report, and this document will keep them from having to introduce a lot of evidence to prove these facts. We admit the facts, and this is merely for the purpose of assisting the Court and assisting us on briefs in briefing the case.

I will ask Mr. Wolff it he has any objection to it.

I might say, Your Honor, that I introduce it, of course, with Mr. Wolff—On briefs if we have made an error, if it is not in agreement with the revenue agent's report, Mr. Wolff can point out where it is different, of course. I am sincere in saying that it is in agreement with the revenue agent's report. Mr. Wolff can point it out in the brief.

The Court:

What do you say, Mr. Wolff?

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 22 was received in evidence.)

Mr. McNatt:

If the Court pleases, I believe that we are going to need some book law on the next document that we are going to introduce in view of Mr. Wolff's argument. Mr. Cushman has it in his room. I wonder if we can have a seven or eight minute recess.

The Court:

We will take a recess for five or ten minutes.

(Whereupon, a short recess was taken.)

The Court:

When we recessed, counsel for the Petitioner wanted to look into the law, as I understood, as to the admissibility of the documents which I have just received in evidence. I would like to hear what he has to say on it and also what Government counsel has to say on the point.

Mr. Cushman:

If it please the Court, this procedure is a little unusual; that is, it is Mr. McNatt's evidence and Mr. McNatt's witness, but if the Court will allow us to switch horses--

The Court:

Proceed.

Mr. Cushman:

I understand the question before the Court is the admissibility of the invoices and statements received by Mr. Anderson and concerning which he has testified; that as a result of receiving those invoices he paid them. If Your Honor please, the Petitioner submits that these invoices are clearly admissible under what is commonly known as the Business Records Rule, or used to be known as the Shop Book Rule.

As Your Honor well knows, many years ago in England it was decided that where a tradesman kept books, why those books would be admissible as a matter of convenience. The reliability of those records was based upon the fact that any man would be presumed to exercise enough judgment to take care of his own money. That is the real reason why the records have reliability.

For some years the Court restricted the shop book rule as to what is known in the accounting field as the Journal, Journal entries. It was stated that the Journal would be acceptable if it could be shown that the Journal was prepared within a reasonable short time after the receipt of the original memoranda or slips of paper or information constituting the basis of the entry in the Journal.

Now at this point we would submit for Your Honor's consideration that a Journal contains not just entries of moneys received, but also contains entries of moneys paid out, so that we have there—I think there would be no question about the fact if Mr. Anderson came in here and produced a Journal showing that he paid out moneys as of the next year after this receipt of these invoices, it would be clearly admissible.

Later on, because of necessity and for the same reasons of reliability, the Courts went even further and decided to admit ledgers—all types of ledgers, if Your Honor please; not just ledgers of Accounts Receivable, but also ledgers of Accounts Payable. Now we submit, if Your Honor please, that the idea back of the rule to begin with, the origin of the rule, was to eliminate the necessity of business houses having to maintain voluminous files of invoices paid and invoices sent.

As the thing originally existed, in some business houses today they would have to hire a ten-story building to keep the bills in. The Court said that if you put it in ledger form or Journal form, it is admissible. But the Court never said, and still maintains, that those invoices are bills and are the evidence and that we will keep them in a different form, in this form of Journals or ledgers if it can be shown

they were made in the regular course of business under certain safeguards.

If Your Honor please, it is in testimony here that Mr. Anderson received these bills. The Court has but to look over here and you can see that that is the way he kept his books. There are a great many people who keep their books simply by maintaining a pile of bills and sometimes a checkbook or perhaps a file of bills. That is the way they keep their records, and there is certainly nothing wrong with it. For Your Honor's information, and not because it means anything in this proceeding, that happens to be the way I keep mine. I just keep my bills, the bills I have paid. They can be verified at any time.

Now in going through this matter, it will appear that counsel for the Government is engaging in two presumptions which they have no right to engage in. One is that the taxpayer is prima facie—and in every case of fraud you have a man who would plea all types of fraud. They have no right to engage in such a presumption by simply saying he cannot introduce any bill which he has received because they think it was in the same handwriting or it was fabricated.

Furthermore, if Your Honor please, Government counsel is assuming that every one of these people allowed Mr. Anderson—

Mr. Wolff:

Your Honor, I do not like to interrupt Mr. Cushman here, but it seems he is trying to state the Government's case. Let him state his own.

Mr. Cushman:

I would like to make my argument my way. Mr. Wolff will have an opportunity to reply. There is no reason for that interruption, no reason at all.

The Court:
All right.

Mr. Cushman:
The second presumption is that you can go out and get billheads from business firms and bring them in here for perpetrating fraud on the Court. These things come in here not on Mr. Anderson's stationery but on the billheads of the people concerned. We think when a man receives a bill—and in reliance on the bill he testified he received it, he testified he paid it, and he testified he kept it—that under the original rule laid down in England many, many years ago, that is complete evidence. And there has never been anything to change that rule.

I don't know how, if Your Honor please, I would prove that I paid for something, a tire repaired in Columbia in 1947 in a filling station which is no longer in existence other than by pulling out a bill—and this happens to come to mind because it actually happened—other than by pulling out a bill and saying, "That is the bill I got, that is my record." I kept it as a part of my business. That is why I kept it.

Why did I keep it? You don't keep these things for souvenirs; they are kept for business purposes. If the man sends a bill next month and it is different from the one I have, and I have not bought anything, it is common sense you go down and tell him, you say, "Look, fellow, you made a mistake. This is the statement you gave me last month and it does not tally with what you gave me this month."

Now we think the origin of the bill when allayed to this case will justify the admission of this evidence. We think that the logic back of the rule—and if Your

Honor please, I am sure of that; I am not certain, but I have every reason to believe that Your Honor agrees—is that the real test of the rules of evidence is to get facts before the Court which can be regarded as reliable and which have a logical bearing on the case and which have probative value. We submit that evidence meets that case.

Now before getting back to the law book, law books are all alike. You have law you can read to yourself, but I will read you a little bit if you don't mind. Mr. Wolff has stated that some of these things are absolutely invalid because they are written in the same handwriting and the same would not appear three years in a row.

Mr. Wolff:
I may state an observation—

Mr. Cushman:
Well, if you please.

Mr. Wolff:
I will say what I want to say, period.

Mr. Cushman:
May I proceed?

Mr. Wolff has stated it could not be valid for the reason—and in passing on that question, I would like to offer for the Court's observation Government's Exhibit F which happens to be the original records of Johnson, Lane & Space Company. Here are the original records. Go through them and compare the same handwriting for several years. We think that

argument should certainly not be considered by the Court.

Now, then, I have already spoken to Your Honor about the Journal, but just to show you that I am not dreaming too bad, here is McCormick on Evidence which I would be glad to hand to the Court. You can use it as you see fit.

"Under this—" Excuse me. Do you want this reading to go into the record?

The Court:

Is it going to be long?

Mr. Cushman:

Not too long. I am just wondering if you want the actual reading to appear in the record since I have handed Your Honor the book. It is a general question of law regarding the admissibility of evidence. I thought perhaps the reporter might appreciate a break.

The Court:

I think it will not be necessary to put it in the record. Just simply make a reference to the volume and the page.

Mr. Cushman:

McCormick on Evidence, if Your Honor please, on page 600.

(Discussion off the record—Reading from McCormick on Evidence by Mr. Cushman.)

The Court:

May I interrupt at this point. I quite agree with everything you have said. That appears to be the basis on which I made my ruling. However, my doubt was this: What the law book speaks of on the original memoranda of the taxpayer; that is, of the party keeping the books. He can make a notation on memoranda of what he received and what he paid. Now that of course is original evidence and could be received just as good or perhaps better than the Journal itself. But I do not believe that anything you have read during the recess or what you are reading now goes to the question of whether a document received by the taxpayer purporting to be a bill, that that is a part of his record. Now it may be that that is so, and that is what I was striving to find. Do you follow me?

Mr. Cushman:

Absolutely, sir. And that is the point on which I wanted to do research.

(Discussion off the record.)

Mr. Cushman:

If Your Honor please, I want this citation to appear in the record in regard to this discussion: Korte v. New York N.H. & H.R. Co., 191 F.2nd 86, syl 6-8 (CANY 1951)

(Discussion off the record)

The Court:

Mr. Wolff, do you have anything to say on this question of the admissibility, of what you have already said?

Mr. Wolff:

I do not believe so, except that that one comment with respect to the Shop Book Rule. My objection, my understanding of the Shop Book Rule is that it requires identification of the documents That is something that is statutory rule; it does require the documents to be identified with respect to their authenticity. Now Mr. Anderson is not qualified to testify as to the authenticity of these records. The Government is not permitted, under certain procedures suggested by Petitioner, to cross examine the records of the individuals who prepared them. The Shop Book Rule, as Your Honor observed, would seem to apply to records of Mr. Anderson and entries made by Mr. Anderson in the regular course of his business, not entries made by some other organization not related to Mr. Anderson and having nothing to do with his business.

Mr. Cushman:

I do not wish to burden the Court, but Mr. Wolff says Mr. Anderson is not qualified to testify as to authenticity. Who on the face of the earth is more qualified? He paid out his money. Is there any greater test of authenticity than the fact it is paid? And that is what the man has testified to, sir.

The Court:

I think this is a very close question. I previously ruled that these documents are admissible. I would like to change that ruling and hold the question in abeyance for consideration at a later time. They will be received. I will pass upon their admissibility at a later date. We have received them in evidence, how-

ever—the testimony of Mr. Anderson that he paid these bills.

I would suggest that in the event the ruling should be adverse you might wish to get the record clear as to what he did pay, the amounts he did pay to his creditors.

By Mr. McNatt:

Q. Mr. Anderson, you received a motion served upon you by the Government to produce all evidence and memoranda. Did you receive a subpoena to that effect?

A. Yes, sir.

Q. Did you bring this along, partly in compliance with that motion?

A. Yes, sir.

Q. Mr. Anderson, what type of records did you keep to show the money that you spent or the money you paid out?

A. Just those invoices.

Q. You kept the invoices themselves?

A. Yes; statements, invoices, whatever.

Q. Mr. Anderson, I show you a mass of documents here. Did you bring these documents to the Court—

A. Yes, sir.

Q. Don't answer until I finish. Did you bring these in here partly because the Government subpoenaed you to bring them?

A. Yes, sir. The reason I recognize this so quick, this is a homemade affair. I made it myself.

Q. At any one time, how could you tell how much you owed any particular man?

A. I would refer to these records, bills—or these bills and stuff like that, just refer back to them.

Q. In other words, you would not trust your memory that you owed a man so much on a certain day?, The only thing you can do is rely on the papers in your possession?

A. That is right, always.

Mr. McNatt:

I do not think the Court would be interested in having this mass of documents introduced. I. do not think it would be necessary. Let the record show they were available under a motion to produce.

Mr. Wolff:

I would like the record to show what those documents purport to be. There has been no statement as to what the documents are, Your Honor.

Mr. McNatt:

I believe the witness testified, Your Honor—

By Mr. McNatt:

Q. Mr. Anderson, describe to the Court what that mass of documents is. It is not the same mass that I just presented to you, I just picked up a handful of them.

A. Well, this is my memorandums and bills. For instance, here is a bill for a well I had dug. And go on a piece further, here is some advertising I had done; just general bills. Water bills I paid the city on rental property. Here is where I bought a lot of wallpaper to wallpaper those houses I sold. I did not use any of them on my own home because it never was wallpapered. It was all for rental property—I mean for sale property.

Mr. McNatt:

Does that, Mr. Wolff, explain what the documents are, or do you want to question?

Mr Wolff:

I do not want to question.

Mr. McNatt:

You asked me to further identify them; is that sufficient?

The Witness:

Here is a doctor and hospital bill Excuse me. I just try to keep everything.

By Mr McNatt:

Q. Is that the only type of records you kept as to your disbursements?

A. Yes, sir.

Q. You do not mean to tell me you can remember now how much you owed a man in 1947?'

A. No, sir, I cannot.

Q. The only thing that you can say is, I have an invoice in my file.

A. That is right.

Q. Mr. Anderson, you testified yesterday that you kept records of payments in pigeon holes and later transferred them to the book.

Mr. McNatt:

I submit for identification Petitioner's Exhibit No 29.

(Petitioner's Exhibit No. 29. marked for identification.)

By Mr. McNatt:

Q. I hand you Petitioner's Exhibit 29 for identification, being a series of memoranda If you will, Mr Anderson, explain the first account on there; how you kept it, where you kept it, and why you kept it.

A. Well, I kept these papers in a pigeon hole in an old roller type desk, and when he came in to make a payment like on February 28, I would mark it down.

Q. What is that particular account?

A. Doolittle.

Q. And these are the payments he made and the dates he made them?

A. Yes, sir.

Q. And a subsidiary record to the 1948 realty book?

A. Yes, sir.

Mr. McNatt:

Your Honor, I have a lot more of these, but this merely illustrates his system of bookkeeping. It is crude, I will admit.

I offer in evidence Petitioner's exhibit for identification No. 29.

Mr. Wolff:

You stated you were famliar with these slips, Mr. Anderson?

The Witness:

Yes, sir.

Mr. Wolff:

You looked at them and know what they are all about?

The Witness:
Yes, sir.

Mr. Wolff:
Do these five sheets all relate to the same year?

Mr. McNatt:
Let him see the document.

Mr. Wolff:
Mr. Anderson saw it, and I was just asking him if it all related to the same year.

Mr. McNatt:
Let him see them.

The Witness:
Let me see them.

Mr. Wolff
Do you know if they all relate to the first year?

The Witness:
I looked at the first one, that is the one he asked me about. That is the type of papers I have. Look at the back of them, it looks like the actual papers.

Mr. Wolff:
No objection, Your Honor.

The Court:
It will be received.

dence.)
(Petitioner's Exhibit No. 29 was received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, I direct your attention to Respondent's Exhibit A, being the net worth computation. Appearing on there are these words: "Construction in progress or finished for sale for financial statement at the end of 1946—$48,000." I ask you if you know where that figure came from, if you know what financial statement it came from.

A. I do not.

Q. I ask you if you had at any one time $48,000 worth of houses under construction.

A. No, sir, I didn't.

Mr. McNatt:

I offer for identification two notes, one being dictated April 3, 1946, in the amount of $55,000; and one dated May 10, 1947, in the amount of $30,000.

Mr. Wolff:

Is it being offered in evidence at this time?

Mr. McNatt:

No.

(Petitioner's Exhibit No. 30 marked for identification.)

By Mr. McNatt:

Q. Mr. Anderson, I show you Petitioner's exhibit for identification No. 30, which you have just heard described, and ask you to explain to the Court what those documents represent and the conditions they were received under.

A. Well, I just borrowed the money.

Q. Who did you borrow it from?

A. E. R. Senn.

Q. Were the amounts represented by these documents an obligation of yours for each of the years December 31, 1946; 1947; and 1948?

A. Yes, sir.

Q. Have you looked at the Government's computation of net worth over there?

A. I looked at it but didn't understand.

Q. You looked close enough to know this is not on there?

A. I could not figure it all out, but I never saw it there. I studied it very carefully to the best of my education.

Q. You actually received this money at the time the notes are dated?

A. Yes, sir.

Mr. McNatt:

I offer in evidence Petitioner's Exhibit No. 30.

Mr. Wolff:

Objection, Your Honor. These documents, Your Honor, are marked "Paid, E. R. Senn." There is no indication as to who E. R. Senn is. It seems to me this would come under the same argument and discussion that we had before with respect to documents. Certainly they could not be shown at this time as to the proof or the authenticity of the proof of the documents themselves.

The Court:

May I see it?

(A document was handed to the Court.)

Mr. Wolff:

I would like to further comment that these documents are self-serving that the maker of the notes would have to be present to identify the documents themselves.

The Court:

These are made by L. T. Anderson. They purport to be notes signed by L. T. Anderson, and as such I think they may be received in evidence.

Your objection seems to be to the question of whether they were paid, Mr. Wolff?

Mr. Wolff:

And as to whether or not it was an outstanding obligation, Your Honor.

The Court:

I think that goes to the weight of the evidence and to his testimony as to whether it is an authentic obligaion. If he does not care to show anything further, it is entirely up to the taxpayer.

It will be received in evidence.

(Petitioner's Exhibit No. 30 was received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, yesterday when you brought in several fruit jars and explained to the Court about how you handled your money, I believe you said you were going to bring the lids back this morning that you forgot. Did you bring them?

A. In that suitcase there (indicating).

Q. Rather than burden the Court with too many of these, is that one of the lids used on the jar that you were testifying to?

A. It still has the asphalt on it; the sand, too, where it was in the ground.

Mr. Wolff:

I was under the impression these jars would probably be in the Courtroom. I wonder if they can make a statement that they be brought in for purposes of cross examination.

Mr. McNatt:

Be glad to, Your Honor.

I submit in evidence Petitioner's Exhibit 31, being the document, the jar lid just testified to as being representatve of several others over here which are available to counsel on cross examination.

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 31 marked for identification and received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, you have previously testified that you did not report the sale of certain property during this period, that you took the information down to the Bureau of Internal Revenue. Now I wish for the benefit of the Court—there is fraud involved which goes to the question as to whether you intended to

evade taxes. I wish you would explain to the Court why these sales were not recorded on a tax return.

A. Mr. Maxwell told me, and I thought—

Q. Who is Mr. Maxwell?

A. Mr. Bertram Maxwell, the president of Maxwell Brothers Furniture Company, Augusta.

Q. I would like to ask you—

A. A chain store.

Q. Where is Mr. Maxwell now?

A. He is dead.

Q. He is dead?

A. Died in 1946. But he helped me out with my managing and telling me whether to buy certain properties or not to, the value of the properties and all. He told me, and I thought, too, that I would get them back within a year or fifteen months or sometime, six months—that you can take off all your costs before you start paying taxes and then as soon as you get your costs out you will have to pay tax on whatever interest you get on that loan or whatever money you receive; and if the party only keeps it a year, a few months, or even a month, whatever he pays you—whether it is ten dollars or two hundred dollars—you will have to take it off your depreciation to make that house cost you that much less, you drop it.

Q. Let me see if I understand what you mean. You mean when you sold one of those houses—

Mr. Wolff:

Objection, Your Honor. I do not want him to summarize the testimony. I think it can be brought out by cross examination.

By Mr. McNatt:

Q. Explain what you mean when you say you dropped something.

A. If a fellow paid two hundred dollars even money and then give me the house back, and if the house was standing on the depreciation sheet at eight hundred dollars, I would have to reduce to six hundred dollars because I already received two hundred dollars out of this fellow. I go back to renting, see.

Q. Now that is assuming that you took the house back?

A. Yes, sir.

Q. When you sold a house, what did you do on the depreciation schedule?

A. Well, pretty soon I got Mr. Bedingfield into it, after I started selling.

Q. Let us go back to the beginning. When you sold a house, what did you do on the depreciation schedule?

A. I dropped it. I dropped it off the depreciation schedule.

Q. Now, have you reported in any tax return the collections made on sales of these properties that were not reported at the time?

A. Before I got my money back out of them, why Mr. Bedingfield took over and he set them up on that long method called the installment method. I have been paying on them every year since then, up to last year.

Q. Now you are speaking of 1948. I asked you if you followed the same system of reporting the collections on sales, say, made in 1942.

A. No. Mr. Bedingfield set me up in 1948 on the installment method instead of getting my money

back. I had not got money back, but he went ahead and changed on my return.

Q. Let us say for the years 1950, 1951, and 1952.

A. I have been paying on every year.

Q. You have been paying on sales regardless of when made?

A. 1945 sales, or any sales.

Q. If you paid at a later year, you are now paying on them?

A. That is right.

Q. Mr. Anderson, to lay the foundation for these statements, I want to ask you if you know if your mother is in Columbia?

A. Yes, she is over at the hotel.

Q. Do you know why she is here?

A. The Government summoned her.

Q. The Government summoned her to testify?

A. Yes.

Q. And you personally brought her over?

A. Yes.

Q. And you are keeping her here now?

A. Yes.

Q. And she is available at the Government's request?

A. Yes.

Q. Mr. Anderson, I hand you a series of documents beginning with 1934 and going on up through 1945, and ask you to please tell the Court what those documents are.

A. These documents are where I handled all types of business, investments. I see on here three gallons of white paint bought and charged to her.

Q. Tell us what the document is.

A. Statements I sent my mother periodically, but not regular. They may vary in here as high as three or six months. The reason I did not send one every month, there was no activity with her; there is no reason to send her a statement.

Q. If the Court please, I can shorten this by a leading question which will not have any bearing on the Government's case. It will save a lot of time.

Are these statements of accounting to your mother receipts received by you and disbursed by you, or why did you account to her for? Is that what these documents are?

A. These documents are just exactly what you said, for her own money that she got out of Dad's estate who died in 1929. Everything in there is her money that I handled for her.

Q. Now, for instance, explain what the entry of July 20 is. Right there (indicating). Read it to the Court and tell us what it is.

A. This statement was made September 11, 1942. "On July 20, cash while in Augusta."

Q. How much?

A. Three dollars.

Q. Now tell the Court exactly what you meant by that entry or that accounting you sent her.

A. Well, she come by the store where I worked up on Broad Street and said, "Son, I didn't have quite enough money." She said she needs three dollars, so I made a notation and put it in a pigeon hole.

Q. You charged it to her?

A. Here is another one here for one dollar. It's got on here, "You owe me as follows," and down here, "I owe you as follows." So whatever she owed

me and whatever I owed her, I gave her a statement and sent it to her.

Q. Well, these are accounting statements where you handled her accounts for her?

A. Yes, sir. I thought it was my duty to do it because I was the only son.

Mr. McNatt:

I submit in evidence, if the Court pleases, a series of accounting statements between Mr. Anderson and his mother. The object, Your Honor, in submitting these is to show that accounting has been going on for a number of years and not just during this period.

Mr. Wolff:

It is not being offered for proof of what it says?

Mr. McNatt:

Yes, it is being offered for proof.

Mr. Wolff:

I thought you said these prior ones—

Mr. McNatt:

The prior ones are offered merely to show accounting going on back at this period, that is correct.

Mr. Wolff:

I would like for the record to show these are a series of twenty-two documents, Your Honor, dated June 16, 1934, through Stptember 27, 1945.

Mr. McNatt:

I have offered the document in evidence, Mr. Wolff, if you have any objection.

Mr. Wolff:

I am looking at it; I will tell you.

Mr. McNatt:

Oh, I am sorry. I thought you were already familiar with it.

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 32 marked for identification and received in evidence.)

By Mr. McNatt:

Q. Mr. Anderson, I show you Respondent's Exhibit No. 1 in the account which is headed "L. T. Anderson and Mary P. Anderson." Please explain to the Court whose money that was and the circumstances under which the account was kept.

A. Well, this was part of the assets that came from my Daddy's estate, and I used this to put certain moneys in to keep from mixing it with my money. I say "certain moneys," her money, when I collected it to keep from mixing with my money, my bank account. This is First Federal, I presume. That is where her money was.

Q. Did you have any interest in that account yourself?

A. Not one dime.

Q. It was merely an account maintained for her?

A. Yes, sir.

Q. Will you state the age of your mother now?

A. Eighty-five, a little over eighty-five, and uneducated. She can read but she don't know anything about figures.

Q. That is all on that.

Mr. Anderson, I show you a series of financial statements beginning with the beginning of this period, January 1, 1941, and I ask you to identify these documents and state for what purpose they were prepared and who they were submitted to.

A. These were to the Georgia Realty Bank, Citizens & Southern. The Bank asked me for a statement and I gave it to them. It does not reflect my cost because Mr. Maxwell told me that the banks did not like that class of property.

Q. Don't go into that now. I will give you an opportunity.

Mr. Wolff:

I move that the last statement be stricken.

The Court:

All right.

Mr. McNatt:

I offer in evidence the documents just referred to, being the financial statements of the Petitioner beginning with January 1, 1941, and going up through January 7, 1950. The ones beyond the date of this period are not submitted for proof of any fact, just a series of the entire statements.

Mr. Wolff:

Mr. Anderson, are these documents you submitted to the bank?

The Witness:

Copies of them.

Mr. Wolff:

Copies of them. The financial statements were made as of January 1, 1941. What are these notes on there?

The Witness:

Well, this is where I copied off various records I had in that pigeon hole or some other pigeon hole so I could make up the statement and get it right.

Mr. Wolff:

In other words, these are copies that were retained by you in your files?

The Witness:

Well this one here I am sure was. There may be some there that are original, but they are kind of old and I just glanced through them to identify the actual thing. Let me see them, I will tell you.

(A document was handed to the witness.)

The Witness:

I believe that is a copy.

Mr. Wolff:

That is the one dated 1941?

The Witness:

I believe all of them are copies. Now these here is where I went up to the bank with papers in my pocket.

Mr. Wolff:

Let the record show Mr. Anderson is referring to financial statements appearing on a printed form, "Personal Financial Statements" appearing at the top.

The Witness:

These figures on here are exactly the same as some papers I had in my possession when I entered the bank and when I left the bank. They did not want those papers, just these figures. Well, I do not see my signature on here, but I think they are mine.

Mr. Wolff:

No objection, Your Honor.

The Court:

They will be received.

(Petitioner's Exhibit No. 33 marked for identification and received in evidence.)

Mr. McNatt:

I might add, one of the reasons for submitting these statements that he maintains has something to do with the $48,000 that we cannot find out about. The computation of net worth says "$48,000 of Houses Under Construction for Financial Statements." I just wanted to submit into Court all that we can find. We have still been unable to find any such figure.

The Court:

I want to ask this question: Didn't the counsel for the Respondent put in some financial statement?

Mr. McNatt:

Yes, sir. There are some duplicates.

The Court:

Are these duplicates?

Mr. McNatt:

In some cases they are, Your Honor.

The Court:

It is a strange situation, unless they differ some way.

Mr. McNatt:

They are submitted for the purpose of having one exhibit, one exhibit complete, running. It is true there is a duplication in here, but there are many statements in here that are not in the one produced by the bank. We thought it would aid the Court if we had one running statement all under one clip.

By Mr. McNatt:

Q. Mr. Anderson, I believe there is one missing book in here for the year 1947. Would you, if you know, explain where that book is?

A. I gave Mr. Orr all I had, and that is all he gave me back.

Q. And so far as you know, you gave him the book and never did get it back?

A. I made up Mr. Bedingfield's 1947 returns from them records in the pigeon hole.

Q. I see.

A. I gave Mr. Bedingfield the exact amount in each one paid. Some were a little behind, you see, and I got them out of the Pigeon hole.

Q. All right, sir. Now, Mr. Anderson, there has been quite a bit of testimony in this case about the valuation of certain notes that you received during these periods. Have you ever tried to pledge these notes as collateral for a loan?

A. I tried to get a $15,000 loan from the C & S Bank. And it was $108,000 net worth of paper, you know. Could I tell you what a net worth means?

Q. Yes.

A. A net worth is a $3,500 loan in my terms, my bookkeeping. It is a $3,500 loan that is paid down to $3,050. That $3,050 was put on the outside of the envelop; that is the net amount—

Q. Due on the mortgage?

A. Due on the mortgage, and that amounted to $108,000. And the bank turned me down.

Q. Now, Mr. Anderson, in computing your income, Respondent's Exhibit A shows personal living expenses for the year 1941 of $2,000; 1942, $2,000; 1943, $2,000; 1944, $2,000; $945, $2,500; 1946, $2,400; 1947 $3,000; and 1948, $3,000. Did you ever give those figures to the Government?

A. No, they ain't right.

Q. If the Court pleases, I would like to go into some of the details of the habits of this man for the purpose of estimating what his expenses were.

Let me ask you this, Mr. Anderson: How long since you have been to the barber shop?

A. About four years ago, one time. Four years ago, one time.

Mr. Wolff:

Your Honor, if we are going to get into the living habits of the Petitioner, I believe it should be his testimony, if the Court please.

Mr. McNatt:

V'ell, we are merely bringing out the questions of the items that we think do have a bearing on it, I think.

By Mr. McNatt:

Q. Let me ask you this: Prior to that time, when was the last time you went to the barber shop?

A. I would not know, but about twenty-five years ago.

Q. How do you get your hair cuts?

A. My wife cuts it. If I may say so, I have a barber's clippers and a comb and barber shears. She cut this hair cut that you see now. The reason she didn't cut it that time four years ago, her Daddy was laying a corpse and I had to have a hair cut to go to the funeral.

Q. How many razor blades do you use a year?

A. I used the Gem type.

Q. How many blades?

A. Two.

Q. Explain to the Court why you were able to get by with two blades.

A. Well, I got a gadget that I made that I sharpen them and just keep using them on and on. Finally I drop them and break them, or something happens to them. I use about two a year. I have used one longer than that.

Q. Mr. Anderson, how much money do you give your wife a week?

A. I don't give—

Q. During these periods 1941 through 1948.

A. You mean a month?

Q. A month.

A. I don't give by the week. Twenty dollars a month.

Q. You don't put any restrictions on that twenty dollars?

A. No. She uses it for clothes. I pay medicine and doctor bills, but I don't buy any clothes or perfumes or these things you put in home permanents with or bobby pins, nothing like that.

Q. I would like to ask you, How do you obtain your shoes?

A. Well, that is a little bit embarrassing.

Q. It might be important, tell us.

A. These buyers that bought these houses from me are what I consider shiftless, don't care. They move off and leave shoes and hats and items of clothing. I got a long practice of going to a house as soon as it becomes vacant for rental and cleaning up everything, hauling it off, burning it up, and so forth. I get all my paint rags out of these people's old clothes.

Q. I asked you about your shoes.

A. I get the shoes, and all them that fit me I keep them.

Q. You wear them?

A. I wear them. And I give the others to the men that works for me. And the hats the same way. But the clothes, they ain't none of them fit. They won't fit me.

Q. All right. Explain to the Court how you get your clothes. Do you get them for cash or how do you get them?

A. I buy dollar shirts. I remember when I paid $2.95 for overalls at times. But the way I get my Sunday clothes—see, I had a son-in-law for a long time and he is pretty practical. We wait until Mayos and Stein's puts on two suits for thirty-five dollars; for a dollar extra you get a suit. When I worked in the store I bought one suit a year. This suit here is three or four years old. I don't go anywhere Sunday.

Q. You started off about Stein's clothes.

A. We split the cost. We paid a dollar extra, both, and pick out what we want. I usually pay for it, or he pays for it, and we split the cost. So we both got a suit for around seventeen dollars. You know, tax and stuff. I don't know to the penny, but it is around seventeen, eighteen dollars. You know, thirty-five dollars for a suit and one dollar extra for another suit. That is how I get them. When I worked at the store I bought a suit every year, but now I don't buy a suit every year.

Q. All right. I believe there was a statement made in the counsel's opening statement that you supported your daughter while she was going to college during this period. Please explain to the Court if you did or didn't.

A. No, sir. My daughter worked for a dentist there in town. I don't know how long she worked, but she made good money. She took that money and went to college with it. The other daughter never did go to college.

Q. How much does your grocery bill run a week?

A. Well, from four to five dollars.

Q. I might ask you to explain to the Court why you could keep it so low.

A. Well, during this period in question I had two cows and I kept them cross bred; that is, one coming fresh in the summer and the other in winter because they go down in the milk. I had all the milk and butter. I had very fertile land, and I put this new model grasses on it. I use rye grass and that made me a winter pasture and had summer pasture and didn't buy much cow feed.

Q. You are getting into too much detail. Go ahead on other items.

A. Well, I took those feed sacks and my wife made underwear out of them, if you want to know. I had to buy a little cow feed during the winter and it helped out, but I took the feed sacks and took them in the house and washed them—my wife washed them and cut them up and made underwear out of them. Good strong stuff.

And then I had a garden and we killed the calves, take them to the packing house. We took some of the cow meat to a cannery there and had it canned up. You know, in metal cans without a label. We opened those cans as we needed it. I used my calves, and I had an abundance of vegetables. I had very rich land. I had a garden; just had vegetables to give away summer and winter.

Q. How about your expensive habits like drinking liquor?

A. I never drank any liquor in my life.

Q. How about your smoking?

A. I do smoke a can of Half-and-Half, about one can a week. I get it wholesale, a little better than ten cents a can. I get them cob pipes wholesale, too, out in Missouri from the factory. They cost a dime apiece, but they last a long time.

Q. Mr. Anderson, give us your best estimate of the amount that it cost you and your family for a year to live on.

A. I would say at the highest, five to six hundred dollars after you consider my vegetables. You know, I am talking about money I spend, actual cash that goes out, not-counting the vegetables. We eat vegetables. We had them twice a day. Eggs for breakfast.

Q. Vegetables don't grow in the wintertime.

A. We can the beans and peas and stuff like that. I grow down there rutabaga, turnips, collards, and mustard. By the time you changed over from one item a day, that gives you—you come back to collards the fourth day. And in the intervening days we open up the beans or peas that we canned.

Q. How about your entertainment, the picture show?

A. I have not been to a picture show since "Gone With The Wind." I did see "Gone With The Wind."

Q. I believe that was about 1938.

A. Yes. Seemed like I did go see "Dr. Jekyl and Mr. Hyde." Oh, yeah, I did see "Abbey's Irish Rose." But I did not see it at first when it cost a lot of money. It came back five or six years ago under another name, but it had the same—

Q. You still believe it was "Abbey's Irish Rose"?

A. They said it was. I don't like picture shows. My wife don't go.

Cross Examination.

By Mr. Wolff:

Q. Mr. Anderson, did I understand you—

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VOLUME II.

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS

FIFTH CIRCUIT.

No. 16,624

LEWIS THURSTON ANDERSON and CLYDE VELMA ANDERSON, LEWIS THURSTON ANDERSON,

Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petitions for Review of Decisions of The Tax Court of the United States, (District of Georgia).

U. S. COURT OF APPEALS

(ORIGINAL RECORD) RECEIVED APR 3 '57.)

The Court:
Now, that completes the direct examination?

Mr. McNatt:
Of Mr. Anderson, yes, sir.

The Court:
Is it agreeable with the counsel for the Respondent to adjourn now for recess for lunch and start cross examination after lunch?

Mr. Wolff:
Yes, Your Honor.

The Court:
Do you care to shorten the lunch hour, or do you want to go ahead with the regular hour until two o'clock? What is the desire of the parties?

Mr. Wolff:
We would be agreeable to start at one thirty.

Mr. McNatt:
That is satisfactory.

The Court:
All right. Let's return at one thirty.

(Whereupon, at 12:30 o'clock p.m., a recess was taken until 1:30 o'clock p.m., of the same day.)

After Recess.

1:30 p.m.

Mr. Cushman:

If it please the Court, before Mr. Wolff goes into cross examination, during the recess we had a conference and tried to do some checking with reference to the exhibit which Your Honor has under advisement. With specific reference to the Barton House Wrecking Company, we would respectfully request the permission of the Court to withdraw these last three sheets from being offered into evidence. We would like to state to the Court that at the time those sheets were presented in this case—those sheets were used because they were found in Mr. Anderson's files.

We found out during the lunch hour that we were confused among ourselves as to what these last sheets meant, how they got into the files, and so on down the line. The rest of it we insist is proper. But on the end, there is confusion in our minds. In good faith with the Court, we are not in agreement ourselves as to what it is. We feel it is improper to submit evidence we cannot more or less vouch for ourselves.

The Court:

Is that part of one proposed exhibit?

Mr. Cushman:

Yes, sir, the last three sheets of Exhibit 2C. Because of the fact we were confused about them, just to be frank with you, we would like to jerk those off.

The Court:
Permission is granted to take those off of the exhibit which has been submitted.

Mr. Cushman:
Thank you. We felt we owed the Court that in good faith.

Mr. McNatt:
I would like to make this conform to the documentary invoice over here and change that over, too, with your permission.

The Court:
Very well. What exhibit is that?

Mr. McNatt:
This is Exhibit 21.

The Court:
Already in evidence?

Mr. McNatt:
Yes.

The Court:
And it will be revised.

Mr. Wolff:
That is the summary exhibit, Your Honor, of the invoices themselves in which they were all listed with respect to outstanding amounts.

The Court:
Those will just be eliminated.

Mr. McNatt:
Deleted.

The Court:
Very well.

Now one other question. The question does remain, though, and the objection still stands as to the exhibit—is it one or two exhibits? Just the one exhibit. That is the one the Court has under consideration on objection of counsel for the Respondent.
Does the objection still stand, Mr. Wolff?

Mr. Wolff:
Yes, sir. There is also Exhibit 21 which is a summary of Exhibit 28.

Mr. Cushman:
And of course, if Your Honor please, naturally the Barton House Wrecking Company—excuse me, we have already discussed that. It would naturally—

The Court:
I understand.

Mr. Cushman:
We would like for the Court to understand that we found those exhibits in the record. We found them.

The Court:
The Court understands that.

Whereupon, L. T. ANDERSON the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross Examination.

By Mr. Wolff:

Q. How old are you, Mr. Anderson?

A. Fifty-eight. Past fifty-eight, going on fifty-nine.

Q. Where were you born?

A. In Jefferson County near Wrens, out on the farm about two and a half miles from Wrens.

Q. Do you have any brothers and sisters?

A. I have a sister living, the one over in the hotel, but the other sister died prior to 1928.

Q. Who is the other sister who is living now?

A. Mrs. Ozzie Faglie.

Q. Did you state she is over at the hotel?

A. Yes, sir.

Q. Where is that?

A. Across the street.

Q. Here in town?

A. Yes, sir. She and my mother both.

Q. What was your father's name?

A. James M. Anderson.

Q. What is your mother's name?

A. Mary Poole Anderson.

Q. I understand your father is dead.

A. Yes, sir.

Q. He died in what year?

A. 1929.

Q. Where were you educated, Mr Anderson?

A. In Wrens.

Q. Did I understand you to say you had a high school education?

A. Yes, sir.

Q. When did you move from the farm that you were born on?

A. Well, I left—Let's state that question again.

Q. When did you move from the farm?

A. It was in 1917.

Q. You lived there from the time you were born until 1917?

A. Not all the time. I was born across the field in another house and moved up to this present house, but it was on the same place. I don't know what time it was. I imagine I was about six or seven years old.

Q. Was 1917 when you went to Harlem, Georgia?

A. Yes, sir.

Q. How far is Harlem from Wrens?

A. Oh, roughly speaking, I say it was ten miles.

Q. How far is Wrens from Augusta?

A. I believe some of them call it thirty-two and some thirty-five.

Q. Is Harlem between Wrens and Augusta?

A. No, sir. Harlem is about, by my guess as twenty-five miles from Augusta. But it is towards Atlanta, and Wrens is out towards Macon or Standardsville, in that general direction.

Q. When did you move to Augusta?

A. In 1917.

Q. You did not stay in Harlem very long?

A. No.

Q. What did you do upon arrival in Augusta?

A. Went to work for M. Tannenbaum, a jeweler.

Q. What did you do for Mr. Tannenbaum?

A. Well, I started off as a watch maker, jeweler, diamond setter. But I got—

Q. You started as an apprentice, is that the idea, when you first started?

A. No. I drew a skilled man's pay and I thought I did skilled work.

Q. I did not understand.

A. I say I drew a skilled man's pay.

Q. Yes, sir. When you moved there in 1917 and started work for Mr. Tannenbaum, had you had any previous experience in the jewelery business?

A. Oh, yes.

Q. Was that what you were doing around Wrens and Harlem, were you in the jewelery business?

A. Well, the experience in the jewelery business was around Wrens, and Harlem some, but it was mostly of a private nature going through the training course. I was trained under F. O. Thompson who is a resident, or was at that time, of Wrens, an older watch maker.

Q. About how much were you making a month then?

A. I think I made fifty-five dollars a week right after I started or pretty soon afterwards, maybe six months.

Q. And that was when you were working for Mr. Thompson?

A. No. Thompson, I worked in connection with him. He taught me, see. He didn't pay me nothing, but after I went to Augusta for him. With Tannenbaum I don't remember what the first salary was, but it was pretty soon I got fifty-five dollars a week.

Q. That was some time shortly after 1917?

A. Yes, sir.

Q. What were you doing in Harlem?

A. I worked for Dr. Walton. I was going to open up a shop there but the town was too small and I

decided not to. I was going to tend the drug store and run a shop in the drug store free of any rent and fix watches for the public while there were no customers to be waited on. But it was too small and I give it up after two or three months.

Q. Didn't make any money there?

A. Yes, I drew a salary.

Q. How much?

A. I don't remember.

Q. Was it small?

A. Well, it was about like other people drew at the time. Of course he furnished me food and lodging. I stayed in the house with him. But I drew a salary.

Q. You went to work for Mr. Tannenbaum on a full-time basis as a skilled laborer?

A. Yes, sir.

Q. Making approximately fifty-five dollars a week?

A. Not right at first, but I can't remember how long thereafter. I didn't ask him for a raise; he voluntarily raised me.

Q. When you started on fifty-five dollars a week, how long did you work for that?

A. Well, it varied down through the years. I got up to seventy dollars a week.

Q. When was that?

A. When I left, twenty-eight years later.

Q. Between 1917, or shortly thereafter, and 1948, did you say?

A. No, 1946.

Q. In 1946 you left?

A. Yes.

Q. Between there you varied from fifty-five dollars a week to seventy dollars a week, increasing over the period?

A. I don't remember how the increases took effect or what months or years.

Q. Did you get any other money from him while you were working for him?

A. Well, I really worked for him. I mean, I worked unusually hard, I thought. I think he has given me, when business was good, five hundred dollars for a Christmas present. Made some overtime.

Q. When was the first property you ever acquired, Mr. Anderson?

A. Well, I would not like to say too positive, but it seems to me the first property I acquired was in the City of Augusta, some part on Moore Avenue, some place on Moore Avenue. Me and Mr. Tannenbaum bought it in partnership, the same man I worked for, and we kept it a year or two and sold it.

Q. What year was that, do you remember? About when was that?

A. No, sir, I don't remember. But I would say the purchase was within two years or less after I started working for him.

Q. Around 1920?

A. Somewhere in there.

Q. Your father died in 1929?

A. Yes, sir.

Q. What was in his estate?

A. County warranties, cash, and real estate.

Q. How much cash?

A. I don't remember the amount, though I did at the time. We had a retired Superior Court Judge there in Wrens and he wound up the estate. I don't remember the amount of cash or the amount of county warrants that he had, but it was plenty in cash and county warrants.

Q. Was the will ever probated?

A. We never did find no will.

Q. Was an inventory ever made of his estate?

A. Not that I know of. We were all three in agreement, my mother, my sister, and myself, and we done just exactly what the Judge said to do.

Q. Was he down at the county Courthouse?

A. No, he was at Wrens, Georgia. The county Court is in Louisville.

Q. Was he retired at the time?

A. Yes, sir.

Q. Could you give us in round figures about how much cash was in your father's estate?

A. I could not, no.

Q. Do you know, could you give us figures as to the property in the estate?

A. Well, he had the home place and the Baby River's track and three stores in Wrens, and then he had what turned out to be approximately half interest. It was shares in a dowry of the Howard place.

Q. You mentioned county warrants or some sort of warrants.

A. Yes, sir.

Q. How much of that did he have?

A. I don't know.

Q. Could you explain what a county warrant is?

A. Yes, sir, I would be glad to. The reason I am stopping to think, I am trying to frame my answer to please the Court and you, too. It is a little bit drawn out. It is an obligation of various counties in Georgia during a period, I don't know when it started but it ended up in the late Thirties. It is a procedure or situation that I don't think everybody would know about, and I hate to get off on it because I will displease somebody. But I could and would be glad to.

Q. Who would you displease?

A. Maybe the Court or maybe you.

Q. What county issued the warrants?

A. All over Georgia. Everybody had them.

Q. When did you sell them?

A. Oh, they paid them. We bought the obligations.

Q. These were obligations issued by the county?

A. Yes, sir.

Q. And when did you dispose of these county warrants?

A. When they paid them, different counties paid them.

Q. And when did they pay?

A. No definite date of payment. That is why they were not a bankable paper. They paid them as soon as the county got the money.

Q. Do you recall any of the particular county warrants in your father's estate?

A. Well, he had various counties. One thing that confuses me, I had a lot of them, too. I was following in the footsteps of my Dad because it was a money-making proposition.

Q. When did you get them?

A. From 1921 or 1922 on up, way late in the Thirties.

Q. About how many did you have?

A. Oh, I have had fifteen, twenty thousand dollars worth of them. I don't know how many at any one time. You see, they run $1,296.12 and then you get one for $68.15. Those listings are not true, but they are given in testimony to state how rugged they are. If you want me to tell you, I will tell you how come the county comes to issue them, how they come about.

Q. Now if you can remember some of the counties that you had warrants from, that you purchased.

A. No, I don't remember. I remember one.

Q. Which one is that?

A. I can't remember the name, but it is close to Savannah. It would not pay me and I got Sheppard & Dukes, a law firm in Savannah, to sue them. I think I had about $5,000 worth of those.

Q. When was that?

A. Oh, that was in the Twenties when all—

Q. How much did you pay for them? Say if they were $5,000, how much would you pay for that one?

A. Well, I am trying to frame an answer that will be concise and just what the Court and you want. I think that in order for you to understand, I better tell you what they are. It is where the Yency Brothers or Happ Brothers or some oil company or some people that had goods to sell. A county had took—it is a note, really, but I don't know why it is called warrants—and they sell these people. These people take what I think you would call a voucher, but they were called warrants. There was no definite time of payment. You don't know if they pay this fall or next fall or any time, see. But they had to be paid sometime, and these people would take them ten to fifteen per cent discount. The warrant itself carried seven per cent, simple interest, from the face of the warrant until it was paid. But where the joke come in—it was no joke, it was a real money-making idea—sometimes the company that sold the warrant would have a couple or three years of accrued interest on the warrant and then they sell it to you for ten to twelve, as a per cent. If they wanted money bad enough, they take fifteen per cent for it.

Q. That is, fifteen per cent of the amount stated on the face of the warrant?

A. Yes, sir, and it already had twenty-one per cent interest piled up on it. And you may have bought it in April and they paid it that fall. The banks could not take them because there was some law, I was told there was some law the bank could not accept the paper because there was no definite time of payment on the paper.

Q. When did you first acquire some county warrants?

A. It seems like along about 1920 or 1921.

Q. How much did you pay for them?

A. First ones I got, I got ten per cent off.

Q. What was the face amount of those?

A. They run all kinds of face amounts. Sometimes the county paid half this year and half—

Q. The first ones, about how much were they worth?

A. Oh, they run up about—along about the first I got some seven, eight hundred dollars, a thousand dollars. I don't know how many I had, didn't buy them all at one time. It was a fellow in Atlanta who brokered. His name is Neal Hartly. I just remember that name.

Q. When were you married, Mr. Anderson?

A. In 1918.

Q. How many children do you have?

A. Two.

Q. Did I understand you to say two daughters?

A. Yes, sir.

Q. What are their names?

A. Marion and Betty.

Q. Are they both married?

A. Yes, sir.

Q. Which is the oldest?

A. Marion.

Q. How old is she, or what year was she born?

A. Well, I remember this. It was a little less than a year after I married that Marion was born. Probably less than thirty days, fifteen days, something like that.

Q. How about your daughter Betty, when was she born?

A. She come, almost to the month, ten years later.

Q. She was probably born about 1928, 1930?

A. About 1929. She was a little baby when Daddy died. She was a little bitty baby then.

Q. When was Marion married?

A. She has been married a couple of times.

Q. For the first time.

A. I don't remember the year. I believe it was in the Thirties. She married pretty young.

Q. Has she been away from home since that time?

A. Well, she stayed down there a short time during the war.

Q. How about your daughter Betty, when was she married?

A. I would have to figure that out. She has a baby about eighteen months old.

Q. She been married since 1950?

A. I believe around about 1950.

Q. Did she live at home until she was married?

A. She went to school.

Q. When did she finish school?

A. She taught school for a long time. I don't remember when she finished. She taught school in the public schools of Augusta, and I think she taught some in Akin County, North Augusta.

Q. Where is your daughter Marion now?

A. She is in Akin—no. Marion. I was thinking about Betty, I beg your pardon. Marion is in Augusta.

Q. You don't recall at all the amount of cash in your father's estate?

A. No, sir. The system we used on that, we get together and do something or other. All of us agreed, and that was the end of it.

Q. What was the total value of your father's estate?

A. Well, I got about $14,000 and $500 in real estate, cash, and county warrants. I think my mother's was more than that, in my opinion, which of course the principal runs in real estate and that is according to appraisal. She got the home place and a store, I know that.

Q. Did you say an appraisal was made back there at the time of your father's death?

A. We had an appraisal among ourselves. We were all well over twenty-one.

Q. Did you ever make a listing of the property?

A. Well, there was nothing to list, we all knew it by heart. We just divided the thing up.

Q. Did he maintain a bank account?

A. Who?

Q. Your father.

A. I don't know too much about what Daddy did in the bank.

Q. Did he have any money in the bank when he died?

A. The bank was broke. I didn't have much money when it was broke in 1929. I did not hear the bank was broke, though.

Q. Do you recall the name of this bank?

A. Both of them broke. Citizens Bank was the one. He had an account in the Citizens Bank.

Q. He had the account in the Citizens Bank when he died?

A. Yes, sir. But he also had an iron safe.

Q. When did you purchase your properties, Mr. Anderson, after the property purchased in joint with Mr. Tannenbaum?

A. I begin right away and purchase them all down through the years.

Q. Where did you purchase your properties?

A. In Augusta and around Augusta, Akin County; just around wherever I could find what I wanted. I don't remember the exact location, don't know what exact piece of property or year I bought it.

Q. What kind of property did you buy, generally?

A. Well, I did own a lot now and then, but I stuck pretty close to that idea, Don't buy anything unless it has income on it, except in woodland. If it had a nice grove or young pines about as big as your leg which I thought I could grow into larger timber, that was interesting.

Q. Did you buy houses?

A. Yes, sir, I bought some houses. Most of my property was, if I may say so, rundown property, burned houses, vacant lots. It was property that would not sell to nobody else and they unloaded it on me, or so that is what I learned later.

Q. You never paid much for a particular piece of property, did you?

A. Well, that is a question that I would rather not say because I don't know how much "much" is. I think I paid too much sometimes.

Q. Then what would you pay for the burned houses?

A. It depends on whether the roof was still in good condition or how bad it was burned?

Q. After you bought a burned house, what did you do with it?

A. Remodeled it.

Q. Did you buy any of these houses in 1940 and 1941, around that period?

A. I think I did buy some stuff—well, my depreciation sheet has got the accurate date I bought it and everything. But there was two pieces of property bought in the Forties, as I recall. It seems to me like it was as late as 1944.

Q. Where did you get the materials that you purchased to remodel these houses?

A. Anywhere I could.

Q. Did I understand you to say you paid cash for most of your materials?

A. I would say ninety per cent of it.

Q. That was during the war?

A. At all times. I have always been a cash man.

Q. Were materials hard to get during the war?

A. Well, I managed to get enough to keep going on. But maybe it was hard to get, I will grant you that.

Q. Did I understand you to say some of the people insisted on cash payment?

A. Yes, sir.

Q. Why was that?

A. Well, the face value of it means that they didn't want credit, I reckon, but I would say that I would not know why.

Q. Were there ceiling prices on materials during the war?

A. Yes, sir, but I don't know what they were.

Q. You knew the cost of materials in those days, didn't you?

A. Well, I learned after I got to buying after the war. I don't know whether I paid over the ceiling price or under the ceiling price.

Q. Who were some of the men who would insist on cash payments?

A. Practically all of them.

Q. Do you recall the names of any of them?

A. Well, we could take that suitcase full of invoices yonder and go through it and see.

Q. Did you ever have any trouble with the O.P.A.?

A. Yes, sir, I did.

Q. On rent controls?

A. Yes, sir, I did.

Q. Would you relate the circumstances of that difficulty?

A. Well, I sold five houses on the project. I had a lawyer to fix the papers, recorded it, took back the security deed that has been mentioned a few times in connection with this case. One of them was Hugh Bedingfield. Another fellow was named Swindler. I forget that barber's name in the other two, but they all went in a huddle on me and went to the O.P.A. and swore they were renting. The O.P.A. jacked me up and made a case against me for not registering houses. I had a friend somewhere and I wrote him about it.

A man came down from Washington, stayed two or three days. He interviewed all the people. He went to the Courthouse and read the records. Then he come back and patted me on the shoulder and said, "You ain't done nothing wrong and the case is settled." That is the last time I heard of it. I thanked him and carried him in the car to the bus. That is the last I seen or heard of him.

Q. Was there Court action brought against you as a result of this?

A. I understand there was. But it was at Brunswick, Georgia, and I didn't know anything about it so I didn't go to the trial.

Q. What Court?

A. United States Court. But I was not renting the property.

Q. You spoke of a project. What does that embrace?

A. Well, that is what we call Riverside Park. I don't know whether it is a project, I don't know what a project exactly means, but I speak of it as that. Not knowing what the definition is, what is a real project in the sense of a dictionary, but it was my idea in doing so just to direct you as to what property I am talking about.

Q. What streets are in the project?

A. Well, Sand Bar Ferry Road is the edge of it, and Orange Street and Colorado Street. But there is four cross streets in there.

Q. Is Orange Street the street that runs parallel to Sand Bar Ferry Road?

A. Yes, sir.

Q. And that is one block from Sand Bar Ferry Road?

A. One block is right.

Q. And taking it square, what are the others? Would it be Colorado Street?

A. No, Colorado is another street like Orange.

Q. Runs parallel to Orange?

A. Forty-eight lots each one of them has; twenty-four apiece.

Q. How about Cherry Street? Is that one of the streets that cuts through?

A. Cherry Avenue. It leads in, but I am sure there is no houses on Cherry. It runs, just carries folks in and out of the project there.

Q. That runs perpendicular to Sand Bar Ferry Road at right angle?

A. I would think so. It is just right along in and out the street. You would think it would.

Q. And Virginia Avenue is another one of these that runs into Sand Bar Ferry Road?

A. Yes, sir. Well, Kelly Avenue is another and Virginia Avenue is another one. Now if I may say, since 1950 there has been somebody that came into the project and bought a couple of lots and built a kind of a duplex, built two duplexes there on Colorado and Virginia.

Q. Did you sell him this property?

A. I sold him the lots sometime after 1950.

Q. When did you first acquire that property?

A. Well, 1939 is when I first bought on Sand Bar Ferry Road.

Q. You built first about twelve houses along Sand Bar Ferry Road, is that not right?

A. Well, let me explain to you just how that happened and that will clear it up. And I hope I am not rambling. I bought up to 300 Sand Bar Ferry Road, bought three little tracks. And I bought another little narrow track and I bought another track. I bought the first in 1939, and it seemed to me like the other two in 1940 or soon thereafter; could have been in 1939. They were just 800 feet long and just—not like this, but they give me some extra distance that I needed on the road. They were very narrow and very long. There were two different parcels of that. The deeds are on record to that effect and maybe plats, I don't know.

Well, I built there in 1940. But on those two little extra pieces I used for garden where I raised my vegetables, see, outside the house. And then later on

in 1940 or in 1941, I made a trade with the same man, McNamera. Ed McNamera and Jim McNamera was in partners, but Ed was the one doing the talking. Jim did not say nothing, but he was half interested, according to records, signing the deeds. I made a trade with him for twenty acres of verbal agreement. His son had bought the track there, about three or four acres, and built a John Deere salesroom.

Q. When it all ended up, about how many acres did you own in that area?

A. Well, if I go back and take him some land I bought around there in what you call Sunnydale, I think I bought it by the acre, I would say over fifty acres; what I got now and what I used to have and various purchases and trades, various times, and I don't remember—

Q. I am talking just in the Sand Bar Ferry Road area.

A. Oh, fifty acres.

Q. Was Orange Street there when you first moved there or when you purchased the land?

A. Well, I had gotten hold of a plat somewhere that the whole thing was laid off, and I think the plat was brought up for 1926. They had it all platted off there, and I changed that a good bit. It got back into a field and everybody forgot about the subdivision in the Thirties. In fact, I ploughed the land myself and sowed oats. It got back into a field, but I had the plat around there somewhere, maybe still have it. The whole thing was platted off.

Q. You destroyed the plat and had another plat drawn up?

A. Yes, sir. The other plat was worn out. I think the surveyor used it to, you know how they are, start this, that, and the other.

Q. You cut it up into lots?

A. Well, I figured it was already cut up in lots, but I changed it.

Q. What was the size of the lots?

A. I don't remember the size on the old ones.

Q. On the ones that you had made.

A. They run from 65 to 75 feet.

Q. Why did you make the changes from the original plat?

A. Well, the way I had the houses built there, I could not get in like I wanted to, you know.

Q. You were going to build some more houses, is that the idea?

A. Well, when I built that Sand Bar Ferry Road, I didn't want that back land but that man made me buy it. I purchased it and lost money, though I was losing money—did lose some money—and after the war labor got still scarce. It was during the war and I tried to get rid of it and tried to sell it, but nobody would have it. I decided I would build some houses on it.

Q. And sell the houses?

A. That is right, get my money for the land. That is what I had in mind.

Q. Where do you bank?

A. I don't do much banking. I do have an account in Citizens & Southern and Georgia Railroad Bank & Trust Company, uptown branch.

Q. Why don't you trust the banks?

A. Well, I have just had so much trouble with the banks in days gone by. Never had a bit of trouble from the Georgia Railroad and Citizens & Southern, but my boss had a lot of trouble with them.

Q. That is, Mr. Tannenbaum?

A. Yes, sir.

Q. Where is Mr. Tannenbaum now?

A. He is in Augusta, or was. I have not seen him in a month or two. I don't get up that way very often. He is very old and feeble now. He was up at Mayos, somewhere up there, but I think he has come home. My daughter says she saw him.

Q. When did the investigation start, your income tax investigation, Mr. Anderson?

A. June 1947.

Q. And I believe you testified you were contacted first by Mr. Ward?

A. I think his name was Ward. That might be him now, but he has changed a whole lot. His face is redder and he has got some older. He is a small man, very nice fellow.

Q. How was that contact made?

A. He came down to the house in a car, I think. He drove up in the front yard, knocked at the front door and waited until I come to the door. He didn't come right on in, he waited until I come to the front door, or my wife—usual form of procedure.

Q. And I understand you made an appointment to go see him in a few days.

A. He and I made the appointment.

Q. You met him down at the post office?

A. Post office, yes.

Q. At this meeting at the post office, who was present?

A. I didn't see nobody except him, except I saw some other men dodging around the room.

Q. Mr. Ward is the only one you were talking to?

A. No. I had been there about thirty minutes—it seemed to me like thirty minutes, it could have been ten minutes or an hour.

Q. Just generally about thirty minutes?

A. Yes. I think Mr. Ward, as I remember—but this is very faint—asked Mr. Orr a question, something about allotting some cost or something, houses to lots or lots to houses, and Mr. Orr just come right on in.

Q. What did you bring with you?

A. I brought some books and records. I don't know what I brought now.

Q. Do you recall what they were, what books?

A. No, I don't.

Q. This was in June of 1947?

A. Yes, sir.

Q. Did you take those books and records home with you?

A. I believe I did, though I would not be sure about it. I believe I took them back with me. Well, see, when they come to see me they wanted to talk about 1944, see.

Q. Was this meeting in June 1947 with respect to 1944 only?

A. When it started off, yes. It ended up all the way.

Q. Did I understand, then, that Mr. Orr and Mr. Ward and you were present and discussed your transactions, I would say, and cost of property? Is that what you said? Did you bring any records of cost with you?

A. I don't remember what I brought, but it seems like I just brought the book I was using for 1944.

Q. Was that just one of these blue books like you have for 19—

A. I magine it was the same book. I don't remember.

Q. Similar to one of the spiral books, Exhibit 23, for example?

A. I could not say positive, but I tried to bring exactly what he wanted.

Q. Was it something similar to that (indicating)?

A. I just would not remember. It was a book. I had several of them.

Q. Did you bring anything else with you, I mean—

A. I don't remember.

Q. Now wait. Did you have more than the 1944 book with you?

A. Well, he just told me he wanted to check 1944, and I probably had a copy of the 1944 tax return. I don't remember. I did have some books that were not this big. They were about this big (indicating).

Q. About the same size as Exhibit 25?

A. No, it was a little smaller than that. It was not made up with this wire affair on the back. My accountants run over the book and I copied it off in another book, throwed it away, but I don't remember what year it was. The name got bigger than the book was.

Q. What was in this book?

A. I don't remember. I guess records.

Q. Records of what, Mr. Anderson?

A. About my business or real estate and renting and so forth.

Q. Rentals. Any invoices? Did you have any invoices with you?

A. I don't think I took a single invoice because I did not know he wanted any. I am ninety-nine and nine-tenths per cent sure there was no invoices carried up there that afternoon because I didn't know he wanted any.

Q. Did I understand then, how many books did you take up there with you in 1947?

A. I don't remember. I just took the records for 1944.

Q. Maybe one or two books, or three books?

A. Copy of my tax return, I reckon. I don't remember that. I don't remember the time, somewhere around two, two thirty, three o'clock.

Q. You don't remember how many books?

A. No, sir.

Q. Did you make a further appointment to meet with Mr. Orr and Mr. Ward at that time?

A. Yes. We was to meet the next day, I believe, or the following day, sometime right after then. We was to meet in the morning, go to the bank and check my box, lock box in the bank.

Q. Yes, sir.

A. And I met them, like I told you.

Q. And where did you go?

A. Went to Citizens & Southern first.

Q. And checked your safety deposit box at Citizens & Southern?

A. Yes, sir.

Q. Was an inventory made of the contents of that box?

A. I would think so. I seen him writing down quite a few things. I didn't check the inventory.

Q. Now from there you went to the Georgia Railroad Bank & Trust Company?

A. When we got there, they asked me if any of my folks have boxes and I told him my mother had a box in the uptown branch. He said, "Let's go through it." I had nothing to hide.

Q. How did you get into that box?

A. I had a key.

Q. I thought you said it was your mother's box.

A. It is.

Q. Was it a joint box?

A. Well, when we went in there and rented it she told the banker we were all together, her and my

sister and brother-in-law. It was generally agreed that I was to go in the box any time I wanted to.

Q. You did go in the box?

A. Yes, without her being present, when I wanted to. I had nothing to hide, so I just let Mr. Orr go in.

Q. Was an inventory made of the contents of that safety deposit box?

A. I believe there was.

Q. What did you do after that, that same day?

A. Well, then he wanted to go down to the house and check my safe, so I told him all right.

Q. Did you go down and check your safe then?

A. Yes.

Q. Who was this; still Mr. Orr, Mr. Ward, and you?

A. Yes, sir.

Q. Was an inventory taken of the contents of the safe?

A. Well, I am pretty sure there was. He wrote down something on a big pad there, yellow pad like you have there, wrote down things. I reckon you call that an inventory.

Q. When was the next time you saw Mr. Orr and Mr. Ward?

A. Well, I just would not know. I didn't see them for another time or two, and I am not sure I saw them then.

Q. That was in June of 1947 when this inventory was taken?

A. The only thing I remember is going to my box and my mother's box and checking the safe. In 1950 I saw him every day for about two or three weeks.

Q. When did you hire Mr. Hugh Bedingfield?

A. In the afternoon Mr. Orr told me I had to get somebody to help him.

Q. When did Mr. Orr tell you you had to get somebody to help you?

A. I think it was the same afternoon that I first—oh, I had seen Mr. Orr before because he had made out another return in another year. I remember him because he would not accept my county tax. I had to go home and get receipts. I don't know his name as Orr, a long tall fellow with black hair.

Q. You think then it was the afternoon of the first day that you met Mr. Orr at the conference in June of 1947, that that was the day you hired Mr. Bedingfield?

A. I think he went around his office. They didn't keep me too long. I don't think I was there an hour, maybe not there that long the first day.

Q. When did you file your first income tax return?

A. Well, I have seen it a dozen times, have looked at it. It seems to me it was for 1939.

Q. 1939?

A. For 1939. George Baird filed it for me.

Q. Is that the first income tax return you ever filed?

A. Yes, sir.

Q. Who prepared your 1939 income tax return?

A. I don't know.

Mr. Cushman:

Mr. Anderson said Mr. George Baird prepared it. Then he asks, "In 1939 who prepared the 1939 tax return?" Might save a little time.

The Witness:

I hired George Baird, but I don't know who prepared the return, the typewriting.

By Mr. Wolff:

Q. You know Mr. George Baird?

A. Yes, sir, personally.

Q. That is the only man you ever talked to in George Baird's office?

A. The way he had men going around there, a big crew of men, if he—from what I saw in the office, I would not imagine he typed any of the returns.

Q. Well, you discussed your items of income with him?

A. Altogether.

Q. You discussed your item of expenses, did you not?

A. Yes, sir.

Q. What records did he ask you to bring?

A. Well, he asked me to bring a list of all the invoices and a list of all the rents I collected, and he asked me if I sold anything. I don't know if I sold anything or not. He said, "Keep your taxes separate." And he said, "You may put your gas and oil you used in your car on one page, but don't put your repairs on the same page, put that on another page, and segregate your donations, and so on, different things." He told me that.

Q. Did you take him all of the records that you needed for 1939 that he asked for?

A. He told me the same thing Mr. Bedingfield did when he accepted the records three, four, or five days later when I carried him all that stuff. He said if he needed more he would let me know.

Q. That was Mr. George Baird?

A. Both of them told me the same thing, about the same words: "If I need anything, any other information, I will let you know."

Q. Did I understand you to state that you took care of the financial affairs of your mother?

A. Yes, sir.

Q. Did she ever file a tax return?

Mr. Cushman:

I don't think that is relevant, whether his mother filed an income tax return. That has no bearing in the world on this case.

Mr. McNatt:

I don't mind him asking the question and I don't care what his answer is, but I hate to buy this record. It costs money.

By Mr. Wolff:

Q. Do you know whether your mother prepared or filed income tax returns?

A. If she did, I never heard anything about it.

Q. If she had them, you probably would have heard about them?

A. Yes, sir.

Q. Since you managed her financial affairs?

A. I certainly do.

Q. How many men do you have working for you, Mr. Anderson?

A. You mean right now?

Q. During, say, the years involving 1940 to 1948.

A. Well, that varied a whole lot, and some of the work was let out on contract.

Q. What was the most number of employees you ever had working for you?

A. Oh, I would say six.

Q. When was that?

A. At odd times during this period.

Q. Did you ever have any difficulties with wage or hour regulations?

A. No, sir. One or two fellows tried to get that twenty dollars a week. They called me to go up there and investigated and found out I didn't have eight men, I believe it was at that time. So the men up there told me, "You a.e not employing enough men."

Q. Did you ever file social security tax returns?

A. Yes, sir, a lot of them.

Q. For people who worked for you?

A. All them that come under social security.

Q. Did I understand you to say you did not file a return for 1947?

A. That is right.

Q. Did I also understand you to say you owe a lot of money for 1947?

A. Owe a lot of money?

Q. Or some tax for 1947.

A. That was the biggest year I had in the rental property sale. I also sold some new property, see, so the next year or pretty soon thereafter they had me paying $3,000 a year.

Q. 1947 was your biggest year?

A. Well, that was just in my mind, but I didn't take into consideration the cost and this, that, and the other. But I did know how to do it, to tell you the truth. After then I think the next year 1948 was over $2,000. Then it seemed to me, I would not say positive, it seemed to jump up to $3,000. You know, 1948 was a big year when I think back, it seemed to me like.

Q. Did you file an estimated income tax return for 1947, a declaration of estimated tax?

A. No, sir, I didn't.

Q. Did you file an estimated tax for 1948?

A. I don't remember whether he filed it for me or not.

Q. Who is "he"?

A. Mr. Bedingfield.

Q. What records do you have in the Courtroom with you today in answer to produce served on your attorneys and the subpoena served on you, Mr. Anderson?

A. I think these attorneys here have all I got, so just ask them for anything you would like to have.

Mr. McNatt:

If Mr. Wolff will state what record he is referring to, I will see if I can find it for you.

By Mr. Wolff:

Q. I make reference to your 1941 income tax return. Do you have the records in here of taxes paid during the years 1941—

A. They have all I got, but I don't—

Mr. McNatt:

I don't understand what you want.

Mr. Wolff:

Taxes paid to the various counties. What did I understand are the records in the Courtroom?

Mr. McNatt:

I don't know.

Mr. Cushman:

Anything that we were supposed to have, we brought it.

Mr. Wolff:
I am asking specifically, do you have the record of taxes paid for 1941?

Mr. Cushman:
Just hand them to him.

Mr. McNatt:
Here they are, everything that we have. I cannot find it that quick.

Mr. Wolff:
Do you have the 1941 records segregated from the 1942 records?

Mr. Cushman:
The subpoena did not say to segregate them.

Mr. Wolff:
Do you have any records for 1941?

Mr. McNatt:
As far as I know, there is no book for 1941. He has testified that there was one book missing or some books missing. Whether it was 1941, I don't know.

Mr. Wolff:
Do you have any records at all with respect to 1941?
Conserving the Court's time, I intend to request the Petitioner's returns for each year, 1941, 1942, 1943—

Mr. McNatt:
Here are some records for 1941, Mr. Wolff, involving real estate, I presume, in this book here.

Mr. Wolff:

Real estate collections. Do you have any other records? It seems to be two sheets in Exhibit 23 with a notation "Material, $1,727.71." Do you have a record of the material cost of that year?

Mr. McNatt:

All the records are there. We had a shotgun motion to produce. I do not know.

Mr. Cushman:

That was the point I was trying to make. He asks for a book and we give him a book. Now he wants to know whether the documents are in the book; and if he gets those, he wants to know where the book is. It looks like he jumps from one side to another.

Mr. Wolff:

These two sheets they showed me are Real Estate Repairs Material with a total listed after each month, the one page; then on the second page is Real Estate Labor with a total listed after each month. Do you have any other records for 1941?

Mr. McNatt:

The records are there, Mr. Wolff, all we have.

Mr. Cushman:

We also submit that there was no objection, too.

The Court:

You mean this one he has now?

Mr. Wolff:

I am still not objecting to the records, Your Honor, or the exhibit.

Mr. Cushman:

If he thought the record was incomplete, the time to make the objection was when they were introduced.

The Court:

Are these records available for the Respondent to scrutinize?

Mr. McNatt:

Everything that we have. We have the suitcase full and a big file drawer full, and they are available to Respondent.

The Court:

I assume you have some idea as to whether there are books for 1942, do you not?

Mr. McNatt:

I do not say definitely. I think Mr. Anderson told the Court that he only kept these records so long and destroyed them.

Mr. Wolff:

Are you saying there are no other records at this time?

Mr. Cushman:

I am not testifying.

Mr. McNatt:

I am not testifying.

Mr. Wolff:

I served the notice to produce on Mr. Cushman.

Mr. Cushman:

In response to this, let me say I brought this and the homemade file and all the pieces of paper we could find. Our friend is entirely at liberty to go through them. He did not tell us to segregate them. We brought them, and there they are.

The Court:

I think it would be well to take a short recess for about five or ten minutes.

(Whereupon, a short recess was taken.)

Mr. Wolff:

Your Honor, I would like to pass on from the subject of the books and records of the Petitioner at the present time with the request that Respondent and his agents be permitted to look them over, say tonight, if that is possible.

The Court:

Would that be agreeable to the Petitioner?

Mr. McNatt:

No objection whatever, Your Honor.

Mr. Cushman:

I am not sure we would have an awful lot to say about it.

Mr. McNatt:

I might add I am not very much of an objector to a question, I don't like to object. I might say that 1941, in working on the net worth today, is barred by the Statute of Limitations. I think he has testified on

direct examination as to the certain number of years and threw the records away. I think the records are very meager, but I do not see where they are even relevant in this case.

The Court:
You mean at this stage?

Mr. McNatt:
Barred by the Statute of Limitations, and it seems to me the question is, (1) Is the year open under the Statute of Limitations? and (2) Is the net worth computation correct? I think that is the sole question in this case.

The Court:
I think that there is a fraud alleged, even though that is one of the uses intended to prove fraud. He is at liberty to use that, is that not true?

Mr. McNatt:
Yes, sir, if that is what he is trying to do.

The Court:
Well, let's leave it as it was. He is at liberty to examine the papers.

Mr. Wolff:
Your Honor, I might also state that one of the essential elements is that it must be shown that Petitioner did not use and did not have adequate books and records at the time of the investigation. I do not know whether I understood a concession at this time that the books and records were not adequate or not.

Mr. Cushman:

Nobody has made any kind of a concession. I do not like the use of that work. I do not know what my friend has in mind, if he has any idea of the concession. We might use the word "stipulation." The word "concession" means something totally different. I don't know what my friend has in mind, but nobody has conceded anything.

Mr. Wolff:

Can we stipulate that the books and records were not adequate?

Mr. Cushman:

Are you seriously asking that question, Mr. Wolff?

Mr. Wolff:

Yes.

Mr. Cushman:

Why of course not, Your Honor. We are not conceding anything.

By Mr. Wolff:

Q. How many years did Mr. Baird prepare your income tax returns?

A. One.

Q. One year. That was the first year, 1939, I believe?

A. Yes, sir.

Q. Who prepared your returns after that?

A. At the post office.

Q. Who prepared your depreciation schedule?

A. I did myself.

Q. You know how to do that?

A. I use Mr. Baird's methods. See, he charged fifty dollars and I figured the Government would furnish me that service free, all except the records. My boss's son, the boy I helped raise, was a revenue agent in these years along then and he taught me some when he come in on a Saturday night. He was a revenue agent in Charleston.

Q. What was his name?

A. Max Tannenbaum.

Q. Who computed the interest income on your returns, shown on your returns?

A. Interest income?

Q. Yes, sir.

A. I don't remember any installment sales back then. If so, I did it myself. I gave it to the man accurately, the best to my ability, the penny interest that I received for the year in question, whatever the year was.

Q. I show you Respondent's Exhibit U, being the 1941 income tax return of the Petitioner, L. T. Anderson, and refer you to the schedule attached thereto.

A. Well, this was right, best I knew how. There was no complaint made at the time I prepared the return.

Q. Who prepared the schedule?

A. I prepared that and that (indicating).

Q. You prepared the schedule attached to the return and also the depreciation schedule?

A. Yes, sir.

Q. The first schedule referred to being headed "L. T. Anderson, Augusta, Georgia, 1941"?

A. That is right.

The Court:

What year?

The Witness.

1941.

By Mr. Wolff:

Q. You took to the post office each year, as I understood, your schedules that you had prepared. Who prepared your return then?

A. I would not know. Usually there would be a lot of them there, and the first fellow that got vacant I just walked over to him. But I didn't know any of them personally. Well, there was a fellow named Wimple who had one eye out over there that worked for the Government. I knew him on the outside, but I didn't know none of the rest of them.

Q. Did he help you prepare your returns?

A. Some of them. Sometimes he would not be there and other times he would be tied up with another customer and I wanted to get mine filled out and get home.

Q. You had prepared the depreciation schedule when you went to see him?

A. Yes, sir.

Q. And told him that was your depreciation for the year?

A. Yes, sir.

Q. Did you take any invoices with you?

A. He never asked me for any, and I never did take any.

Q. You also took this schedule that I showed you a few minutes ago?

A. That white paper—

Q. Or something similar for each of the years with your expenses listed?

A. Yes, sir.

Q. That was the method you followed from 1941 for how long, Mr. Anderson?

A. Well, I went to Mr. Bedingfield.

Q. And you went to Mr. Bedingfield in June of 1947?

A. 1947.

Q. On your first visit to see Mr. Bedingfield, what did you take with you?

A. I don't remember if I took anything.

Q. Did you have any books and records?

A. No, sir, I don't remember I had. I probably had that (indicating). I took that to the post office for Mr. Ward. He asked me if I had that with me, but I don't think I left it. In fact, I am sure I didn't.

Q. Didn't leave anything at that time?

A. No, sir. He didn't ask me to leave it.

Q. What was your relation with Mr. Bedingfield at that time? Why did you go to see him?

A. Well, Mr. Orr told me he would have to have somebody to help him, and it just could not be anybody; it had to be somebody that knew what he was doing.

Q. So you went to see Mr. Bedingfield?

A. I asked him who would be a good man and he said, "Hire anybody you want to, but it has to be somebody that knows that work."

I said, "Who does know it?"

And he said, "Well, Mr. Bedingfield is one of them, and there are others around town."

He said Bedingfield used to be—I don't think it was the Income Tax Service. I don't remember the technical words he said, but I think the words he used were "Used to be with the Department of Internal Revenue." I just don't think that "Internal Revenue Service" was in style then, but exactly the words he said I don't know.

Q. Would it possibly be the Bureau of Internal Revenue?

A. Whatever it was at that time. I don't think it was Bureau of Service. He worked for the Government in the Tax Service.

Q. Mr. Bedingfield had formerly worked for the Government?

A. Mr. Orr said so.

Q. And he had an office at that time?

A. He quit the Government and went into business for himself I understand.

Q. In Augusta?

A. Yes, sir, in the Masonic Building.

Q. When you went to see Bedingfield, what did you tell him?

A. I told him what was up, and I told him Mr. Orr had recommended him. He said, "That is fine. I know Orr well."

Q. Well, what was up?

A. I mean, you know, about the investigation. Orr had to get somebody to help him. And I say, "I come up here to get you to help Mr. Orr." And he said, "All right."

Q. And who did you talk to?

A. Mr. Bedingfield himself.

Q. Mr. Hugh Bedingfield?

A. Yes, sir.

Q. What did you tell Mr. Bedingfield you wanted him to do?

A. Well, do whatever was necessary. And then is when I signed the power of attorney.

Q. You did not specify what years you wanted him to work on for you, did you?

A. Well, I intended him to do all of it.

Q. How do you remember, recall so vividly this power of attorney that was signed?

A. Well, it seemed a little strange to me. A power of attorney was something I was not too familiar with. I must have looked sort of funny—I may look sort of funny all the time—but I must have looked a little unusual, and he stopped and told me. He said, "I cannot sell any property, I can only tend to your tax work, see. This power of attorney is limited to tax work only and I cannot sell any property, so you need not be uneasy. I think the average layman thinks power of attorney means he can sell property, execute contracts, lease property."

Q. Do you sometimes use power of attorney in your business?

A. Well, I would have to stop and think a while to see whether I ever used one and for what purpose. I have signed them at the bank, I know that. And they did not fill them out, either, because when I paid the note I got it back unfilled out. They requested me to tear it up right in the bank, one banker did. I remember that. So I tore it up, but it was not filled out. I was through with it, had no use for it. I took the note home with me for income tax records, to get the interest off it.

Q. When you went to see Mr. Bedingfield, you said you might have had these records when you went to see Mr. Orr on that same day.

A. I don't know if I left them in the car or not. I found out Mr. Orr was going on all years, and I didn't have anything but the information I thought he would need for 1944, so that throwed the thing out of line. I did ask him what he was going to charge me and he said he did not know, see. According to how much work he had to do, then he would be able to tell.

Q. How many powers of attorney did you sign?

A. One.

Q. Do you recall for what year it was?

A. It was not filled out.

Q. What sort of a caption did it have on it?

A. Well, I didn't pay too much attention to it. I was somewhat excited.

Q. Because of the investigation?

A. Yeah. I didn't know what it was all about, didn't know if I had done anything wrong or not.

Q. When was the next time you saw Mr. Bedingfield?

A. Oh, I would say not over a week or two, just exactly the time, I don't know. Sometimes if you go up and he was not there, you have to go back an hour later and catch him. I go out and attended to a little other business and come back.

Q. You went mainly to see Mr. Hugh Bedingfield?

A. Yes, sir. There was another fellow there. I think his name was McCutcheon, his son-in-law. I don't remember discussing any tax matter with him.

Q. Did you ask Mr. Bedingfield to file a 1947 return for you?

A. Well, we was talking about the 1947 return, and—

Q. When was this you were talking about it?

Mr. Cushman:

Let him answer the question. I think he is entitled to answer.

The Witness:

In June 1947, which day I don't know. But it was a week or so after I saw him, and he questioned me about how I was keeping my books, what kind of records I had. So I was keeping a record of each

house separate. You always have a lot of junk and brick and stuff left over, so I give that to the next house as a present on my records. Mr. Bedingfield changed me. He says, "Well, that ain't the way I want to do it. You keep records like I tell you, and just as soon after Christmas as you can get them up here, bring them up because I get awful busy before March 15, see."

He didn't tell me this, but I guessed if I got it up there in January before he got so busy, the price would not be so high because he was kind of idle, you know, and I got them up there. That was my assumption; he didn't say that. He did not say what he was going to charge, but he did say to get them up as soon after Christmas as I could.

By Mr. Wolff:

Q. And you got them up right away?

A. In January.

Q. In January of 1948?

A. Yes, sir.

Q. You asked him to prepare a return for you for 1947?

A. Yes, sir. I handed him the papers and he looked them over. I didn't tell him nothing.

Q. What was in those papers?

A. Well, I had my rents on one page, and I had my 1945 sales on one page; who it was to, and what year it was sold, how much the down payment was, and how much the fellow paid in that particular year. I can't think if there was anything else or not. But you could tell all about it.

Q. Did you have a list of the dividends you had received from that year?

A. I don't know but what I had any dividends, don't remember the list. But I carried him all I had, what was right.

Q. Did you carry him a list of interest income for the year?

A. Yes, sir, I carried him everything. He said, "If I find I need anything else, I will phone you and get you to bring it to me."

Q. Did you carry to him any invoices?

A. No, sir, I did not.

Q. How was this information submitted to him?

A. By hand, in person.

Q. What did you have it written on?

A. White paper just like that paper you have.

Q. So what did you give him, a sheet of paper?

A. Several sheets of it.

Q. Several sheets of paper?

A. Yes.

Q. With information on it?

A. Yes. I had learned somewhere in the process of this work that when they got through with 1945 or 1944, or say 1945 sales of property, they wanted to get that sheet out of the way and make another one. I think Max Tannenbaum taught me that, each year's sales on a different piece of paper instead of them having to take time to pick out a 1947 here and go down here and pick out a 1945 and then jump back up that far and pick out a 1946. This way they could just go right down the line and make it easier for them. So I had them on separate paper.

Q. Did you carry any books to Mr. Bedingfield at that time?

A. No, I didn't. He said he would phone me.

Q. When did you carry the books to Mr. Bedingfield?

A. Not until 1950.

Q. 1950.

A. That is when he started to work, see. I don't think he filed a 1947 return because he was waiting on Mr. Orr to see what kind of disposition Mr. Orr was going to make of his work, so I understood one day along about June or July.

Q. June or July of what year?

A. 1948. I was not pushing him about the returns. The thing I wanted to know about most, I was expecting him to take care of everything. But I wanted to know how much money I owed, because when he said he wants the check to go off right soon, I wanted to have the money.

Q. Who did you give these papers to?

A. To him himself.

Q. To Mr. Hugh Bedingfield?

A. Yes, sir.

Q. You did not carry any records with you at all other than the papers?

A. That is all. He didn't say, "You didn't bring half enough." He didn't look them over careful. I would think in the efforts of doing business that if he started to work on them right then he might have found something I had not brought him, see. But he never did call me for any more and I took him practically the same thing in 1948, letter for letter, and he went ahead and filed it.

Q. Didn't take him any books in 1948, either?

A. No, sir.

Q. Just this information typed on sheets of paper?

A. Yes, sir, that is right. He filed a return sometime in August, I believe, in 1949 for 1948. It was away late. I had to pay some fifty or seventy dollars, something like that. I forgot. But he didn't make

me pay the interest. He filled it out for one price, actual tax, and sent it off to Atlanta and here comes a notice in a few days for interest. He didn't make me pay the interest then. I sent him a check for the interest, and that is the last I heard of it.

Q. You saw Mr. Bedingfield, I believe you said, in the bank sometime in July or August.

A. In front of Citizen & Southern Bank. It is kind of an archway there.

Q. Was there a discussion at that time about the filing of your 1947 returns?

A. I don't remember exactly what took place, but that is the time he told me about Orr would be down in two or three weeks to finish up and he wanted to see what Orr had done, see. I judged at that time he was going to take up where Orr left off. I didn't know anything about it.

Q. Did you ever ask Mr. Bedingfield to prepare a 1947 return?

A. I may say that I asked him how to keep—he asked me what kind of records was I keeping and I told him. He says, "If you want me to file your 1947 return, you keep changing over and do like that, like I just told you." So I did it and carried them up there. I said, "Well, when you get ready, let me know." I don't remember the exact words.

Q. You never signed a return, did you?

A. No, sir, I didn't.

Q. When did you first bury some money, Mr. Anderson?

A. In 1920, early Twenties when the banks were breaking so bad.

Q. What was in the first jar? How much was in the first jar you ever buried?

A. I would not know, way back then.

Q. A whole lot of money, a little bit, $5,000?

A. I would not bother to bury less than five hundred or a thousand dollars.

Q. How much?

A. Five hundred to a thousand dollars in any one jar.

Q. And how many jars did you bury the first time?

A. Well, I buried them as I got the money, as I made the money, and one thing or another. I kind of buried them as I wanted to.

Q. As you got the money, had the money?

A. No particular time. I had to pick chances to go do it.

Q. Did you ever bury any of your mother's money?

A. No, sir, I didn't.

Q. Where was that money buried?

A. In the country.

Q. In the woods?

A. Woods, yes.

Q. Do you still have some buried?

A. Very little. I had to pay Mr. Senn, and then the lawyers hit me, the income tax lawyers. I have little buried now. I don't know how much.

Q. You don't know how much you have buried now?

A. No, sir.

Q. Don't have any idea?

A. No. I had to go to one of the jars, and there ain't but two jars in the ground, and I had to go to one of them to get some money to pay the last installment to one of the lawyers. I had enough to pay the other one some. I have not paid them all I owe them yet, but I am paying on it as I get the money in, collect it in.

Q. You have two jars buried now?

A. Yes, sir.

Q. How much do you have in each jar?

A. They ain't nothing like full. There might be $1,500 in there.

Q. When did you start taking the money out of the ground?

A. I have been taking it out and putting it back all these years, different times.

Q. How much money did you have buried in 1948?

A. Well, I had some of this borrowed money buried then. In fact, I never did use it all in the project down at Riverside Park, all I had buried. I got most of it. I think, I am not sure, I had it mixed up, you know, with my mother's money.

Q. About how much did you have buried in 1948, Mr. Anderson? ——

A. I don't know.

Q. December 31, to be specific.

A. I don't know. I don't work on a year-to-year basis.

Q. You buried some of the borrowed money, though?

A. Yes, sir.

Q. And that was in the—

A. Safe keeping.

Q. That money was in the ground December 31, 1948?

A. Let's not get definite about the dates. The borrowed money, what I didn't use right away, went in the ground because a fellow who pays cash is subject to robbery by someone. See what I mean?

Q. Did you have any other money besides borrowed money in the ground around 1948?

A. Well, I just cannot tell whether I had some of the old money or what. I don't think I did. I think all of it was equal to borrowed money, or equivalent.

What I mean, it balanced off. Mr. Orr can tell you to the penny how much I had in the safe in 1947 and also in 1950, because I think he counted every bit of it and he can tell you. My guess would be $1,000 in 1950 that I had in the safe. That is strictly a guess now. He was putting it all down. I think the method he was using, if he found three $5 bills he put down three $5 bills; he didn't put down fifteen dollars. I imagine that, or saw some writing he done.

Q. Did you have a whole lot of money buried in 1948?

A. I just don't know.

Q. How many jars did you have buried in 1948?

A. I don't know that.

Q. You testified that on January 1, 1941, you had twenty or twenty-two thousand dollars buried, is that not right?

A. The reason I could tell that so good, I started a new project. This new rental property, see, right down the road.

Q. Where is that? Sand Bar Ferry Road?

A. Yes, sir, that is it. And I happened to do a little checking up then.

Q. I thought you built the first houses there in 1939.

A. That was one house at 300 Sand Bar Ferry Road, but I would not be sure about that. It might have been in 1940 I built it. It was a few months later that I started the other twelve, and I had forgot and did not know how much money I had. So I took stock of it to see whether I—in other words, if I did not have enough money to build but six houses, I could not buy twenty acres of land. You get me?

If I had money enough to build eight houses, what I thought eight ought to cost, I would buy more land.

But I bought twenty acres and built twelve houses in a year or two, inside of a year or two, as the record shows.

Q. I thought you completed those houses in 1940.

A. No, I didn't.

Q. On Sand Bar Ferry Road?

A. No.

Q. When did you complete them?

A. According to the dates there that I saw on that thing, I think some of them run as late as 1942 or 1943. I don't remember. I do remember this very clearly: that I started the point nearest Augusta and went down the road.

Q. Did you ever have any occasion to count your money during 1948, the money that you had buried?

A. No, sir, I didn't.

Q. You started building a group of houses in around 1946, didn't you, on Orange Street, Colorado?

A. It would seem to me like I buried some in 1946. I know I did.

Q. You had some money buried then, didn't you?

A. I would not know how much. It seemed to me like I was pretty well out, but those dates and years, I don't work that way.

Q. How many jars did you have buried?

A. I don't know how many jars.

Q. You have never had any occasion to count the money?

A. I just did not get around to it. It was all mine, I thought, and I did not have time. It takes a lot of time to do that.

Q. Did you ever make an inspection to see if it was still there?

A. Oh, yes, I go hunting and see if anybody has bothered it.

Q. Ever lose any money in the woods?

A. Not that I know of. If I did, I didn't miss it.

Q. What would happen to that money if you died?

A. Well, I was just hoping that I would be able to tell my daughter how to find it. My wife does not know where I have any money buried or the date I buried it or nothing else.

Q. Does anybody else know?

A. No, nobody else knows. But I would tell my daughter. My wife is a very good woman, but she is a home woman. She looks after children and the home, but she is not a business woman. So if I was to get bad sick or something—

Q. How about in 1942, did you have an occasion to examine the money or count the money that you had buried?

A. Well, sometime along before I went to spending too much about Sand Bar Ferry Road, and I did have a check there.

Q. When was that?

A. Well it was a month or two before I agreed to buy the land. I don't remember what date it was. I didn't have any use for land unless I was going to build houses on it to rent.

Q. How about 1943, did you ever have occasion to count the money in the jars?

A. No, sir, I didn't. Didn't work on a yearly basis. I don't keep any track.

Q. Did you have occasion ever to count the money in the jars?

A. Yes, sir. Before I bought the land from Mr. McNamera, I agreed to buy it. Of course I did not take depreciation off these houses for two years, as I remember. I am not trying to quote myself accurate, but I done filed two income tax returns and took off

depreciation for the houses. I did not have a title to the houses, didn't have a lease. I thought I was dealing with a gentleman of the highest degree, and he must have thought so about me. When he was able to get a surveyor, he got one and surveyed it out. The deal was closed and everybody was satisfied. It was an awful risk. I done an awful bad thing. Suppose he would have died? He did die after a while, you know.

But suppose he did drop dead or something like that? The only chance I had to recover that, I bought it from J. A. and E. W. and both of them did not die at one time. Both of them were good, straight citizens; the highest type citizens that you would ask for. I thought I was, too. I thought I was going to do what I said and I thought they would do the same, and they treated me that way.

Q. Did you build the houses before you had title to the land?

A. Didn't have a receipt, letter, title, agreement, option, or any of those kind of papers you lawyers like to talk about. Didn't have the first word written. We traded in five minutes because he wanted the price of an acre. I tried to get him to sell it a little cheaper when I was trying to get that. He told me he was not going to budge. I already knew the man for years, and I knew when he said scat he meant scat and when he said $250 or $5,000 for twenty acres he meant it. And I was in a hurry, so I told him, "All right, I will buy."

Q. Were you known as a little tight in those years?

A. Trouble was, twenty years before then. He knew it, too.

Q. You were known as Little Tight twenty years before then, is that what you said?

A. Ever since I have been in Augusta, fifteen years, something like that. George Bates, uptown branch, was the first one that ever give me open line credit.

Q. How much did those houses cost you, about?

A. I don't remember. I kept a record of it and I put it on the depreciation sheet. Whatever I got on the depreciation sheet I think is right. I kept them one by one, the cost. But they all cost about the same.

Q. I don't remember the figures that were stipulated. About what was it?

A. I don't know, I have been through so many things. Another thing, diabetes makes your memory go and come.

Q. Did you spend $18,000 on these houses and at the same time not even own the land?

A. I certainly did.

Q. And you were known as Little Tight?

A. Yes, sir. I did it.

Q. Do you remember Mr. E. A. Weathersbee?

A. Yes, sir.

Q. You remember the details of the transaction?

A. No, sir, except what the records show.

Q. You sold that to him in around 1942, didn't you? The records show 1942.

A. It seems to me it was right at the end of one year or beginning of the next, along about winter, middle of the winter as I remember.

Q. It has been stipulated, Mr. Anderson, that at the end of 1942 the security deed outstanding on the property sold to Mr. E. A. Weathersbee was $714; the security deed, the value of the security deed or amount of security deed, $1,436.94, a reduction of $34 during the year. Did you generally reduce the security deeds by that amount, $30 a year, $34 a year?

A. Mr. McNatt, what does my record say about that? My records is right.

Q. This is the same as what your records say, I believe.

A. Whatever I have on my books is right.

Q. The amount of security deed was reduced by about $34 in 1943?

A. Whatever I have on my books is right.

Q. Did you generally just let an individual reduce his mortgage or securities in a year by $34 in one year?

Mr. Cushman:

It is not a necessary question. The answer is already before the Court as to the stipulation year to year in mortgage. It is just cluttering up the record. My friend has it before him, he can read it. I see no point in this line of questioning at all.

Mr. Wolff:

The value of these mortgages has been brought in, and it is still at issue whether or not these amounts have been stipulated.

Mr. Cushman:

He is talking about reduction as shown on the records as to debt. The stipulation is before the Court.

The Court:

The stipulation is to the amounts that have been reduced.

Mr. Cushman:

The stipulation was 147 to the next year; it was thirteen something the next year, and something else.

That is before the Court. He is reading the stipulation and questioning the witness about it.

Mr. Wolff:

I was not going into the correctness of these figures at all. I am trying to get how the taxpayer operated these securities and how he operated with respect to his business even those figures have been stipulated.

The Witness:

Well if I may say so, I had one fellow I thought was a good man but he was poor.

By Mr. Wolff:

Q. Are you referring to Mr. Weathersbee?

A. He was poor, too.

I remember one fellow, his truck run in the ditch and broke his back. I voluntarily told his wife when she come to make the next payment she could forget the payments on the house for the next twelve months and I would not do the first thing about it, and the tears started running down her cheeks.

Q. Did you collect interest for that year?

A. I didn't collect nothing. They didn't take advantage of all that. I told them that, and I meant that. I would not have collected a dime interest. I would have paid the insurance. I pay a lot of insurance, and none of them pay insurance. I have to pay for it and charge it back to them. Some few cases do pay. But I meant just what I said when I found out her husband was laid out in the hospital with a broken back. I told her to forget the payments for twelve months.

Q. The interest was building up, though?

A. We didn't discuss interest. In fact, I never seen the guy, didn't know him. But what times he had been in the house—he didn't buy from me, I heard about him from others—he sounded good. So I thought instead of handing out so much donations to the church and things, I thought that was a direct cause where I could do good and I done it. But he got in better shape before the year was out and started paying and everybody was happy.

Q. Well, eventually how did it work out? Did you charge him interest for the period it was deferred?

A. He has not paid.

Q. He is still paying?

A. It has not been worked out yet. He is still behind.

Q. How about E. A. Weathersbee? Do you recall that?

A. I know it well.

Q. What was on that property?

A. A house on a piece of land. I don't think it was a lot; kind of acreage, something like that. A good big piece of land went with it, larger than a lot.

Q. Did you ever press Mr. Weathersbee for payment?

A. Never asked him for a payment in my life as I remember of. I let him pay as he got ready.

Q. Were you a little concerned about his not paying but for the $34 in one year?

A. Well, I would say this: that knowing him like I did—I don't remember what the agreement was, but I would say this: that why he didn't pay any more, if he didn't—Of course I am relying on my records and not records that you have, especially, see. But I would not say all of them, but a lot of them people, most all of those people had ups and

downs where I did have to take it back or loan them some money on the notes, see.

A lot of them people, most of them wanted notes. Lawyers desire to fix it that way. But they bring back a $100 receipt if it is a $25 a month deal. They wanted money for two months, saying "I have something that is pressing me," see. So rather than get a lawyer—they already had a hard enough time trying to keep up $25 a month—I would say, "You bring me two receipts, any two receipts you have and put them up with me as collateral and I will lend you $50 for this sixty days." And I didn't charge them any interest.

Q. What type of receipts are these?

A. Payments on the house, wrote on a piece of paper about like them pieces in pigeon hole there, "Twenty-five dollars payment on house to ...." and dated and signed by me. He puts up two receipts. If he goes crooked, he is just the receipts short. And when he pays, I give them back. When they pay that $50 and the $25 for the next month, I actually hand him three receipts. See what I mean?

You work with those people, you gain the confidence of them and try to get them to stay there and pay for it, if they will. And some of them you can do it. Some of them you can treat them good and they will love you to death.

Q. Did you ever have anybody lose any receipts?

A. Yes, sir.

Q. What did you do in those cases?

A. I would refer to my records and books and give them a new one. But I don't give it to them like your question is framed. Some of them people are tricky. Some of them will go clean for three years and get crooked as a black snake and vice versa.

I write them a letter. I remember one of them there named Doolittle on the project. He said he sent the November receipt to the laundry and he wanted a duplicate. Well, that is probably true. I frame this letter like that. "Mr. Doolittle, Augusta, Georgia, 418 Orange Street. I believe"—of course, he didn't write me no note, but I wanted to make it sound good.

"I believe you made a request for a duplication of a note"—something or other—"where you have lost the November receipt and you think it went to the laundry or was disposed of where you will never find it. I would like to state to you at this time that this is a letter"—that I have examined my books, see, or records; somehing or other—"and I find you paid me for November. I find you made this payment. In fact, I find all your payments was clear for this particular year. I want you to keep this letter, and in case you never find that receipt you may use this letter to keep you from losing your money because I don't want you to have any lost. But in case you ever find that November receipt, this letter becomes null and void."

Now I would not know how legal that was, but fixed it up so that if anybody were to pull it out two or five years later I would not be out twenty-five or thirty dollars.

Q. Did you keep a receipt?

A. In 1950 as I sold houses, it got bigger. Some fellow came along with a double receipt book for $1.50 and I bought one. I have been buying them ever since.

Q. The first one of those you kept was 1950, about then?

A. I think so, but I cannot go by it altogether. I use that for my wife because she gets things tangled

up sometimes. She is ill herself. She has to take those electric shots, and it cost twenty-five dollars one time about 1950. When that happened, she came out crazy as a bat. They said she was crazy anyway in 1950.

I have a certain place in the house that she puts the money when she gets it. She has a little change herself. She can make change, but most people have learned to bring the right change. When I am not at the house, she writes it in that book and goes and puts that money up. And when I come in—I don't do it at dinner time, middle of the day; I do it at night—I check the money there and see if it is all there. Then I get that book down and put those duplicate receipts in the book.

Q. What did you do before you started using the receipt book? What did you do when your wife collected money?

A. She marked it down. That is hard to get hold of, you know, run out of paper or something or other. She would lose the pencil and mess around like that, but there were not soo many coming in. Most of them paid me, but I decided it was my own way of doing business. That duplicate book cost so little and it was the best thing for my wife to use.

Q. What did Mr. E. A. Weathersbee do, Mr. Anderson, do you know?

A. Well, I believe he worked in the mill for a few years after he bought the house, it is right near Mill Village. Then I think he got to bringing some kind of rags or wastes from the mill and sorting it out and selling it. And about the time he paid for it, he built a store.

Q. In the land?

A. Yes, sir, it was on the land.

Q. A grocery store? What type of store?

A. A grocery store.

Q. Who operated the grocery store?

A. His wife, I think. I didn't go over there much. I just didn't get around there much. He sold beer, and I don't hang around those places. You could get in trouble there. He brought the money over to the house. I don't think he ever paid me in the store.

Q. You think that building increased the value of your property?

A. Well, the first store I saw there was not any more than a garage. He just used the front doors to it. But he has remodeled it, I would say, since 1950 and got a pretty good sized store there. I have not checked the size of it or the value of it or anything, but it looks pretty big. You know, not like these stores here but pretty big for a country store. But that has been recently done.

Q. Do you have with you any canceled checks, Mr. Anderson?

A. No, sir. I don't keep them. I have four or five at home. If I may tell you, I will tell you how come I got them. When I pay something and don't get a bill and I get my statement, I take that check and put it away. I got a file just like you lawyers has got. Every month I put that file away and get out a new one. When it gets about that fat (indicating) with invoices and stuff, I take it out and put a new one in my desk and file that away in a filing cabinet, see. All the checks I got is just where I paid somebody and they didn't mail me a receipt. I request a receipt mailed. I don't like to check it with a receipt.

Q. Did you collect, what did you do?

A. Well, I put it on the book, a piece of paper, whichever one was handy.

Q. Do you have those papers here for 1945?

A. I don't know what I have over here for 1945, it has been so long ago. But I mark it down because some of them have eighty-seven cents to them. And if I may say so, I have been for two or three years, and did not clip any coupons when there was coupons due.

Q. What type of coupons, Mr. Anderson?

A. Well, I did have a Salisbury, North Carolina, bond one time, and I have had bonds back during the years.

Q. Did you ever acquire any U. S. Treasury bonds?

A. I think I had one Series E one time when Mr. Orr was down there, but it was a $17.50 baby or $18.75.

Q. Any three and a quarter, five hundred dollar bonds?

A. Back in the Thirties, I had four and a quarter. I like big interest.

Q. Did you buy any during the years 1940 to 1948?

A. No, sir, not that I know of. I don't remember. But I do remember I had $5,000 worth along about 1935, all of one issue. And they called them and it kind of made my head swim because I could not get four and a quarter anywhere else.

Q. Where did you generally purchase your securities?

Mr. McNatt:

Pardon, because of his forty-five dividends. He has a book of them.

The Witness:

Yes, this is my handwriting and my book with my initials under there. I believe it is the first page.

Wat a minute, that is for Mother. That was the record I was keeping for her. I had not noticed that until just now.

By Mr. Wolff:

Q. What is this "p-l-o-u-g-h"?

A. That is St. Joseph's Aspirin. Of course they make a lot of things.

Q. What is the total of the dividends shown there?

The Court:

You better identify what he is looking at.

Mr. Wolff:

First page of Petitioner's Exhibit 25, Your Honor.

The Witness:

Thirty and twelve is forty-two; forty-eight and a half it looks like.

Mr. McNatt:

If the Court please, I believe the witness may not be clear. The record has stated this is his mother's dividends collected for his mother.

By Mr. Wolff:

Q. Did you collect any dividends in 1945 yourself, Mr. Anderson?

A. I think so.

Q. You have no record of those?

A. No, sir, except what is in the book. Over here it says some more, Boston & Edison, ten dollars.

Q. That is page 3 of Exhibit 25.

A. October 1, 1945, I got "Plough, four fifty; Bibb Manufacturing Company, four twenty; Savannah-St.

Augustine Gas, ten dollars. And that was that fellow—

Q. When did you make those entries?

A. The same time I cashed the checks. Sometimes I would not cash the checks for a month. Sometimes the checks got covered up with something on my desk. I think those books are exactly right according—

Q. On page 3 you have at the top of the page, "August 1945." On page 4 you have the date April—what year is that on page 4?

A. Well, that is one-nine-four, and it looks like that has been mutilated, somebody has had something to do with that thing, made it look like a seven. I just don't know.

Q. And then you have October of 1945 on page 5. Is there some reason for the difference in sequence there?

A. I would have to take and study the whole thing out and figure it out.

Q. In keeping the books, how is it that it happened that you put August on one page, April on the next page, and October on the next page?

A. That was just my way of doing business. That is the way I wanted to do it. See, here is January 1, 1946.

Q. Do you have any records of interest income in 1945?

A. Well, I would not know. I would have to go back to the books. I don't know what I collected in 1945. I know some did not pay any interest for a year or two.

Q. What books would you go back to?

A. Whatever book covered that year. I would not know.

Q. Do you have that book with you today?

A. Well, them yonder books is all I got (indicating).

Q. Mr. Anderson, I show you Exhibit 24, with the number 19, apparently page 19, on the upper righthand corner of the righthand page. On the page opposite the number 19 page you have, apparently, sales listed. You have "1946 or 1947 sales." Why did you have it in that manner?

A. You mean this Nelly Meade Johnny affair?

Q. Yes.

A. Well, I sold her the house and she moved in. She hired Pierce Brothers to fix the papers. Well, they messed around and didn't fix the papers in a long time, and when they did fix the papers they fixed them wrong. They caught their error before they sent them to me. I think I signed some more, but I know she did. They fixed up some more p[illegible]ers. As slow as they was and who they was and how this thing happened, I would imagine it was a year before I got the papers. She was paying.

Q. When did you make that entry in the book?

A. I must have made this entry, it looks like 1946 or 1947, while he had the papers. It must have been right at the end of the year.

Q. When did you borrow this money from E. R. Senn?

A. On the dates on the notes. I have forgotten now.

Q. Where did you borrow the money?

A. In Augusta.

Q. At your house or where?

A. He was down my way, we was riding around.

Q. April 3, 1946; this note indicates a payment of where you borrowed $55,000 from Mr. Senn. When did he give you that money?

A. On that date.

Q. Where were you when he gave it to you?
A. Out in the car riding around.
Q. In what kind of bills did he give you the money?
A. I don't remember, ten or twenty dollar bills.
Q. Were they in a jar?
A. No, in a suitcase.
Q. In a suitcase. How much room did they take?
A. I don't remember. A good big suitcase.
Q. Who is Mr. Senn?
A. Just Mr. Senn is all I know. He is a friend of mine.
Q. Did you ever do business with him before?
A. I have known him for years. I learned of him through Maxwell, or he learned me through Maxwell.
Q. Where is Mr. Senn?
A. He is in Florida.
Q. Good friend of yours?
A. Yes.
Q. When did you pay Mr. Senn?
A. Well, I would have to look at my records on that. I paid him in 1950, the first time I paid him any money.
Q. What did you do with the money when you got it?
A. Buried it.
Q. You say 1950 was the first payment you made to Mr. Senn?
A. Yes, sir; $31,000.
Q. Have you repaid him the entire $55,000?
A. Yes, sir. No interest. I have not paid him any interest.
Q. You paid him $31,000 in 1950?
A. Yes, sir.
Q. Did you ever send photostats of these notes to Mr. Hugh Bedingfield?

A. No, I don't think I had occasion to because after I left Mr. Bedingfield in 1950, I went to Peoples & Burnside then.

Q. When did you make your first payment to Mr. Senn, this $31,000? Do you remember the date?

A. No, I don't.

Q. Did you see him and give him the money?

A. I went to Miami and took it to him.

Q. Where did you get the money?

A. I sold my securities and sent the Government $10,000. Then I took what was left and went and dug up what I had there, or all I could find. I had $31,500, but he told me that I might need some and to keep the $500.

Q. You took him the $31,000 after you had paid the Government $10,000?

A. Yes, sir.

Q. Where does Mr. Senn get his money?

A. That I would not know. I heard him speaking about building some building, big building up North before he came South.

Q. How long have you known Mr. Senn?

A. Oh, several years before he left Augusta.

Q. When did he leave Augusta?

A. I would not know exactly, but he left after that date.

Q. How long had you known him when you borrowed money from him.

A. It was more than five years; probably ten or twelve years. I don't know. I borrowed money on a plain note from Mr. Maxwell the same way.

Q. Who is Mr. Maxwell?

A. Bert Maxwell.

Q. Who is he?

A. He was head of Maxwell Brothers, a chain of furniture stores. I bought my second house from Mr. Maxwell.

Q. Would you tell me a little bit about Mr. Senn, Mr. Anderson, where you first met him?

A. I could not tell you that.

Q. Where does he live?

A. He was in Augusta then. He lived on Reynolds Street right about where the Finance Building is. He had a room around there.

Q. Did he have any family?

A. Not that I know of.

Q. What kind of room did he have?

A. Well, it was a very—it was a good type room, but it was an old type house. They tore it down.

Q. Was it a rooming house?

A. Well, kind of yes and no. That is, some roomers but it was not a regular rooming house. Small scale, only had two or three roomers.

Q. Did you ever visit him in this rooming house or the house where he lived?

A. Yes, sir.

Q. And he lived in one room?

A. Yes.

Q. How many other people lived in the house?

A. I would not know.

Q. He didn't have any family, did you say?

A. None around Augusta.

Q. Where did he keep his money?

A. That I don't know. When I got it, it was in a suitcase.

Q. Did you ever see any in his room?

A. Well, he was a fellow who didn't keep it out exposed like books or anything.

Q. Did he ever mention he might have some in a trunk or suitcase or anywhere?

A. I knew he had money, but I never questioned the man where he got his money. I think that would be, it would not sound right in my opinion.

Q. Did he keep money in the bank?

A. No, I would not think so. He didn't like banks.

Q. Where did you get these notes that were prepared here?

A. I had them around the house. I keep a bunch of them, blank notes, all the time; notes of all kinds, mortgages in South Carolina and Georgia.

Q. Did you get these notes at the bank?

A. They originally come from the bank, I think. Sometimes when lawyers be closing or something, after hours, I buy them at a stationery store.

Q. How did you know there was $55,000 the first time you borrowed money from him?

A. We counted it.

Q. Where did you count it?

A. Out in the woods where nobody would bother us.

Q. You go out and sit on a stump?

A. No, we get in a thick pine thicket.

Q. How long did it take you to count it?

A. I expect two or three hours.

Q. Where did you meet Mr. Senn?

A. I went by his house and picked him up that day.

Q. Where did you first meet Mr. Senn?

A. That I cannot tell you. There is another old man who stays in the Jackson Hotel and he knows me practically as good as Mr. Senn, and I have known him several years. I don't know when I met

him. I don't keep track or any record or memory of when I first meet a fellow. I just strike up with him, and know him, see him.

Q. Did you ever go to dinner with Mr. Senn?

A. We have eat together.

Q. Ever had him at your house?

A. Yeah, I think so.

Q. Is he a relative of yours?

A. No, sir.

Q. Why didn't you pay any interest on these notes, Mr. Anderson?

A. He said he would let me off on interest.

Q. When did he say that?

A. In 1950.

Q. When did you finish paying?

A. I would have to look at my records to see, but it was 1953 or 1954.

Q. What sort of records do you have to indicate that you paid him?

A. Well, he credited on the back of the note.

Q. He what? I didn't understand you.

A. Well, you see, what you have there—$30,000, $55,000.

Q. Yes, sir.

A. Well, I give him a new note for a different amount and picked up them. He just marked them "Paid" like the bank does. When I go in the bank and borrow $500 and pay $250, they stamp it and the new note is $250.

Q. The $30,000 dated May 10, 1947, was that in payment of the 1946 note, partial payment?

A. No, sir.

Q. Why did you borrow the first $55,000 in April of 1946, Mr. Anderson?

A. Because I thought I needed it

Q. Needed it to do what?

A. To build them houses down there and sell them on credit to get rid of that land.

Q. When did you build the houses?

A. Well, along in them periods.

Q. What did you do with the money when you received it?

A. Buried it.

Q. Where did you bury it?

A. Out in the country.

Q. With the other money that you had buried at the time?

A. Near it.

Q. How much other money did you have buried at that time?

A. Where I had a burying spot.

Q. How much other money did you have buried at that time?

A. I don't know. I don't think very much.

Q. How many jars did you have buried?

A. I don't know.

Q. How many jars did you put this $55,000 in?

A. Well, I would not know. I had some gallon jars, Twelve Oak Vinegar jars I put some in; it holds more. But I put $12,000 in a half gallon fruit jar.

Q. You originally were supposed to pay four per cent interest on this $55,000?

A. Yes.

Q. Do you pay four per cent on buried money?

A. Well, I could not use it right then but he told me he thought he would go to Florida and I thought I better get it while I could.

Q. Was he living in Florida when you borrowed this money in 1947?

A. No, he was still in Augusta.

Q. How long did you keep the money buried, the first $55,000?

A. I began to use some of it right away.

Q. When did you borrow the $30,000 from Mr. Senn?

A. At the time of the note.

Q. In 1947?

A. Whatever time the note says.

Q. Where were you when Mr. Senn gave you the money?

A. Out in the woods again.

Q. Same place?

A. No. You know, around on the same farm.

Q. Do you own this farm?

A. I did at that time. It belongs to the bomb plant now.

Q. What is this bomb plant?

A. An A.E.C., Atomic Energy Commission. It had some very thick timber on it where you could not see the view.

Q. What did Mr. Senn have his money in the second time, the $30,000?

A. A suitcase.

Q. Same suitcase?

A. I don't know about that.

Q. What did you do, take the money out of the suitcase?

A. I got the suitcase and all and later gave it back to him.

Q. Sir?

A. I got the suitcase and later gave it back to him.

Q. You counted this $30,000. How large were the bills?

A. Ten's and twenty's.

Q. You don't know where he kept his money?

A. No, I don't.

Q. Did he have a private bath in this house where he was living?

A. I would not know. He rented the premises.

Q. You mean he rented the room?

A. Yes.

Q. You were supposed to pay four per cent interest on the $30,000, too?

A. Oh, yes.

Q. What did you do with the money when you got it?

A. Same thing.

Q. Buried it?

A. Well, I had a little house out in the yard built out of tile. I didn't think it would burn. I didn't have a chance right at that time to bury it, I was busy, so I set the suitcase out there in the shop until I got ready to go off.

Q. Did you lock the shop?

A. Oh, yes, sure. Nobody suspected it was out there.

Q. Did you put it under a blanket or something?

A. No, put it under some building supplies I had in there.

Q. What sort of supplies?

A. Well, cabinets and sink cabinets and plumbing and one thing or another.

Q. Why did you borrow the $30,000?

A. To build the project with. See, the thing about the houses would not sell because I had information that I got from a reliable source that nobody wanted to live in Anderson's cow pasture. I went to Mr. A. W. Lucky, an old realtor and a good friend of mine, and told him my trouble. He said to go get

money from somebody and get that thing built bigger so it would turn into a community and I could sell houses. So I done it. He was right about it. They rented good on the road, but they would not rent by themselves right there. That was after the war when everybody had plenty of money.

Q. Property had increased in value since during the war, had it not?

A. Well, I did not notice much increase. There was not many sales going on, and we had the war. And I did not notice much increase. I really think that you have to have sales to know of an increase, or realize an increase.

Q. Have any Army camps down there?

A. Yes, sir.

Q. During the war?

A. Yes sir.

Q. About how many soldiers during the war?

A. That was a military secret.

Q. A whole lot?

A. I would not know what a whole lot means.

Q. How many Army camps down there?

A. One.

Q. Have any Navy near Augusta?

A. Never heard of any Navy.

Q. Any Air Force?

A. Daniel Field up there, but it was just hearsay; said to be too small. They kept small planes. And they had Bush Field later on, but Bush Field was not in; it was twelve miles out from Augusta. But they furnished barracks out there for them as far as I know. I never had any—if I do, I don't remember.

Q. Any defense plants there?

A. Well, that would be hard for me to say. And I would not like to quote myself on it because I just

don't know. I was not studying it, but I will say this: that they had a place called Lombard Iron Works there and I understand—in fact, I heard, I didn't see it but they started making outside—In fact, I saw some of the actual bombs. They were about this long (indicating). They welded two hooks on them, I reckon so the airplanes could tote them. It is my understanding they were made with a chemical powder. I didn't try to find out nothing about it. I was not trying to find out. You ask questions, you know, and you get in trouble.

Q. How about these Senn notes again? After you buried the money, how long did it stay in the ground?

A. That I would not tell you. As I needed it, I would go back and get some.

Mr. Cushman:

He has asked the question about four times. I don't know how many times my friend wants the answer to that question. He is cluttering up the record.

The Court:

I wonder if we should not take a short recess. Let's make it actually five to ten minutes this time.

(Whereupon, a short recess was taken.)

The Court:

What is the desire of the parties with regard to adjourning for the weekend? Can we go on and reach a better point; for example, could we finish the cross examination today, do you think?

Mr. Wolff:

Your Honor, I don't think we can finish the cross examination today. It seems to me that there is very little that can be accomplished tomorrow. As I understand, some folks have plans for tomorrow. Our feeling is that if we did meet tomorrow, at the most it would be for two or three hours only, and I don't think it would help much in closing the case or completing the case.

The Court:

I should state that the Courtroom is in use by the United States District Judge on Monday morning. So it would seem we should probably convene at two o'clock on Monday, unless you would rather meet in some other room and continue.

Mr. Cushman:

What is your suggestion, Your Honor?

The Court:

The Court is willing to go ahead for another hour this afternoon, if the parties would like to do that.

Mr. Wolff:

Perhaps we could start at one thirty on Monday.

The Court:

One thirty instead of two.

Does that suit you. Mr. Cushman?

Mr. Cushman:

Yes, Your Honor, that is agreeable with us.

The Court:

Let us continue until about five thirty this afternoon.

By Mr. Wolff:

Q. The money you had buried in 1941, where did you get that money?

A. I had saved it and made it over a period of years. I invested some of it, put some of it away for a nest egg, or until I got old.

Q. Was any of that money from your father's estate?

A. Well, I could not segregate it. Some of it was buried along with it.

Q. Did you get a great deal of money from your father's estate?

A. The property and all was worth $14,000 or $14,500. That is property plus cash and county warrants.

Q. Did you borrow any of the money that was in the bottle in 1941?

A. No, I used borrowed money to take care of the specific obligation. My way of figuring in the investments was to let each tub set on its own bottom; so whatever I used the money for, that had to take care of the interest.

Q. Why did you pay off Mr. Senn in 1950?

A. I didn't pay him off. I paid him $31,000.

Q. Why did you pay this $31,000 in 1950?

A. It was all the money I had.

Mr. Cushman:

This cross examination is nothing but stalling and repeating questions—"Why did you pay a man what you owed him in a given year?" That has been testified to five or six times. I think, if the Court please,

we ought to stay here until this cross examination is finished. We are getting to the point where we are beginning to stall and repeat. Those questions were asked him four or five times. Now let us get to the meat of the matter and finish.

By Mr. Wolff:

Q. Where did you meet Mr. Senns in Florida?

A. I met him in Miami.

Q. Where in Miami?

A. I don't remember the name of the house. It was near the post office.

Q. Was it a house, did you say?

A. A rooming house. Sometimes he goes fishing down on the Keys.

Q. How did you take the money down there?

A. In cash.

Q. Did you dig up the money before you took it down there?

A. Sure.

Mr. Cushman:

If Your Honor please, he has testified previously that he dug up the money, sold securities, borrowed money, and took the balance down there. I can understand his position, but the record is costing all of us money, sir. I don't think it should be allowed.

The Court:

The Court feels that we should eliminate repetition, but this is cross examination and there is bound to be some repetition.

Try to keep it to a minimum, Mr. Wolff.

By Mr. Wolff:

Q. What type of money did you take down to him, Mr. Anderson?

A. Ten and twenty dollar bills.

Q. New bills?

A. No.

Q. Old bills?

A. Just as I got it from the bank. I don't know how new or how old it was.

Q. Why didn't you ask Mr. Senn to date the notes when he marked them paid?

A. Well, he dated the new one.

Q. Did he mark it the day it was paid?

A. No, I don't believe he did. All I wanted was to have it marked paid. I was not doubting he would ever come back to me. This was in 1950.

Q. Did you ever keep any cash in safety deposit boxes?

A. Very little.

Q. What did you keep in your safety deposit boxes?

A. Mr. Orr can tell you. I was in the old gold business back in 1930 and 1935. I was a wholesale dealer in old gold. I had bought up some junk, and it was too good to sell for junk. I had some of that in the safety deposit box and some bonds.

Q. Was this at the same time you worked for Mr. Tannenbaum?

A. Yes. I bought gold from him, too. I bought it over the counter for one price and then he sold it to me at another price, and I sold it to the Government.

Q. What else did you keep in the safety deposit box?

A. Just whatever Mr. Orr found there. I don't think—

Q. Never kept any money in there?

A. I don't think I had any cash in there. I had some gold coins in there. I was a big believer in gold coins. I don't know how many I had, but I had a handful.

Q. Did you prefer keeping the money in the ground rather than in the safety deposit box?

A. Sure.

Q. Why is that?

A. Well, the safety deposit box would not hold much. I had an itty bitty box. And I kept the gold and bonds up there. The jewelry was broken and damaged, but I could fix it and sell it if I ever did get around to it, which I never did.

Q. How much was this jewelry worth?

A. Well, I would say, roughly speaking, between five hundred and a thousand dollars. I also had the gold coins and the bonds in there.

Q. You still have that jewelry?

A. Yes, sir.

Q. Still have the gold coins?

A. No, sir. I done away with them, let another coin dealer have them.

Q. What was Mr. Senn's landlady's name in Augusta?

A. I don't remember.

Q. When you went out to get money from Mr. Senn, did you take all of the money in the suitcase?

A. He brought it out to the car and we drove off and counted it out and come back.

Q. You say there was practically $55,000 in the suitcase?

A. Yes.

Q. The same with the $30,000?

A. Yes.

Q. Mr. Senn never mentioned where he got his money?

A. No, sir, never mentioned where he got his money.

Q. What type of business was he in in Augusta?

A. He was retired.

Q. Didn't do anything?

A. Not that I know of, never saw or knew of him working.

Q. You know where he got his money?

A. No, sir, I do not.

Q. How often did you see Mr. Senn?

A. Well, I have seen him as much as once a week. We rode around some together on Sunday afternoon looking over things.

Q. What does Mr. Senn look like?

A. He is about my size, older than I am. I don't think he is quite as heavy as I am. I never asked him his weight. He is about the size of the gentleman sitting next there to you.

Q. How did you contact Mr. Senn in Florida to let him know you were coming down to pay him the $31,000?

A. I just went down there and looked him up. I knew where he was supposed to stay.

Q. How did you know that?

A. Well, I just knew like I know where my home is.

Q. Do you go to Miami, Florida, very often?

A. Yes, sir, once a year; something like that.

Q. Now when Mr. Senn left Augusta, how did you know he was going to Miami?

A. He told me he was going to Miami.

Q. Did he give you his address in Miami?

A. He told me where he was going. He didn't give it to me on a piece of paper.

Q. Did he ever write you letters?

A. No, I don't remember that he ever wrote me letters.

Q. Did you ever get a Christmas card from him?

A. I don't remember getting anything from him by mail.

Q. Mr. Anderson, I show you Exhibit U, your 1941 income tax return. That is your signature, is it not?

A. Let me get my glasses, I can't see good. Yes, sir, that is it.

Q. That is your signature on the 1942 income tax return?

A. Yes, sir.

Q. On Exhibit V, also?

A. Yes, sir.

Mr. Cushman:

If the Court please, we admitted those documents without objection. I don't mind the questions, but I think it is a little long past.

By Mr. Wolff:

Q. Is this your signature on the waiver attached to the 1944 return, Exhibit X, dated January 14, 1948?

A. Yes, sir, that is it.

Q. And on the same exhibit, the waiver dated January 24, 1949, is that your signature?

A. Yes, sir, that is it. And that is there (indicating).

Q. The next waiver dated February 18, 1950, is that your signature?

A. Yes, sir, that is it.
Q. On the 1945 income tax return—

Mr. McNatt:
We have not declared the Statute of Limitations for those years.

The Court:
I still think counsel has some purpose here.

Mr. Wolff:
Yes, sir.

Mr. Cushman:
Would it be asking too much to ask the purpose of the questions, the relevancy?

Mr. Wolff:
The Commissioner of Internal Revenue has gone into cases where the waivers have been introduced or have not been introduced with respect to it—has been raised after the hearing was completed. So to avoid a situation of that nature at this time, I wanted to make clear in the record that these waivers have a value, and there is no possible application of the Statute of Limitations for these documents

Mr. Cushman:
We settled all that in stipulation last Sunday, Your Honor, and we have no reason to bring it up now, sir.

By Mr. Wolff:
Q. How many cars did you own on January 1, 1941, Mr. Anderson?

A. Now those dates there, I would not like to say too positive, but sometime then I bought a second-hand Ford pickup truck. I don't know the date I got it or sold it, but whatever is on my returns is right.

Q. Did you have another car?

A. I had a car and a truck.

Q. A car and a truck?

A. Yes; a two-door one I paid $185 for. The other was a pickup truck.

Q. How much livestock did you have at that time?

A. I don't remember.

Q. Did you have any cows?

A. I had a lot of cows and then I had a few cows.

Q. Did you keep any in Anderson's pasture?

A. Oh, yes, I had cows down there.

Q. How many?

A. I don't remember.

Q. Did you have any building equipment?

A. What would you call building equipment?

Mr. Cushman:

I object to this line of questions, Your Honor. The gentleman has gone and taken his own exhibits and the bank statements which he introduced. He asks, "Mr. Anderson, do you own any cows?" He knows there is livestock on there. "Do you have a Ford?" He knows it is listed on there. I don't think it is cross examination.

Mr. Wolff:

I don't know where he got the idea these are my own exhibits. These were introduced by Petitioner. They are notes from Mr. Anderson to his mother.

Mr. Cushman:

The only thing I have to say on this is that the Government has been on the case for eight years. After eight years, and four hours of cross examination, if they don't know he owned a car in 1941, then something is wrong. And it does not show up on the net worth statement. Furthermore, this is absolutely useless. Those bank statements which Mr. Anderson submitted to the bank mentioned livestock on there. All this is pointless.

The Court:

Much of this is pointless at this stage to the Court, but I assume it would be tied into the theory the Petitioner has on the case.

Mr. Cushman:

I would not want to limit my friend by my comprehension, sir, but I cannot comprehend—I understand Your Honor's position that you want to give everybody their day in Court. I am helping him here by making these objections. But I hope to get this thing settled. I hope the Court is going to let us stay here long enough to get the thing settled.

By Mr. Wolff:

Q. Do you and Mr. Senn have any mutual friends in Augusta?

A. No, sir, except Mr. Maxwell.

Q. Mr. Maxwell is dead.

A. Mr. Maxwell loaned me money on a plain note like that.

Q. How did you settle the differences of the amounts that you owed your mother at various times, Mr. Anderson?

A. I had an absolute record.

Q. She sent you a check or you sent her a check, or how would that work?

A. Those statements outline it thoroughly.

Q. On Petitioner's Exhibit 32, dated February 1, 1941, at the bottom, Mr. Anderson, you state: "So this leaves you owing me a balance of $53.19, and I owe you for the corn." Now how did your mother send you that check, or how did she pay you that amount?

A. She didn't pay me. Whatever I got on the corn and we figured it up. You see, you don't handle corn in cases, you get a lot of cases. You weigh out two bushels. When I got the corn, I credited her with the corn. You get me?

Q. Did you ever give your mother any money?

A. Well, it says so on here. Didn't we just read that a while ago?

No, I didn't give her money to live on because I figured she had enough. But I could have in case something happened to this money. I would have fed her if she didn't get something.

Q. Did your mother ever take in sewing for a living?

A. Oh, no, I would not do anything like that. Sometimes I paid her a quarter or something like that to sew something for me. She likes to keep busy doing something like that.

Q. Did she ever sell any vegetables out of the garden?

A. Not that I ever knew of. She give them away. She lives off of the money that my Daddy left her. And I look after the business, except what my brother-in-law Albert Faglie, the husband of Ozzie Faglie, takes care of. I don't charge anything for looking

after the business. I would not think of doing such a thing. I am not that kind of a man.

Q. You charged her twenty cents for lime though, did you not?

A. That is an item.

Q. Does your mother live with you?

A. No.

Q. Does she live in Wrens, Georgia?

A. She stays around with me, and I don't charge her any board. My sister don't charge any board.

Mr. Cushman:

By the Government subpoena, they ought to know where she lived. I submit that any question as to where the lady lives is obviously for the purpose of delay.

By Mr. Wolff:

Q. On Petitioner's Exhibit 33, for the first day of January 1947, you list U. S. Government securities in the amounts of $15,069.95. Where did you get those securities, Mr. Anderson?

A. Well, I told the bank man what I had. I don't think there was a single Government security in there, but I don't know. I don't think there was. I think it was other kinds of liquid assets. He took it down on a plain piece of paper at one time. I remember that definitely. He said he wanted to get it right. He was kind of a young banker, look like he just started young. They put him in charge of this work. I called some broker or somebody else and found out this stuff. I did not give him this fifty cents. I would say that he got that somewhere himself. Now why he put it under Government securities, I don't know.

Q. On Petitioner's Exhibit 27, Mr. Anderson, on the last page there seems to be four loose pieces of paper there. I wonder if you will tell what they are.

A. This is rent, payments on the house, I believe. Jackson—this is payments on the house, and this is rent (indicating).

Q. Are these the little slips you kept in the cubby hole or pigeon hole of the desk?

A. These are some of them, but there were worlds of them.

Q. Did you have any more for 1948?

A. I don't know. Those look like they were fairly loose in there. I thought I had them all pinned on there with paper clips, and I see a sign where someone removed it—I would not say positively, but you can see the rust spot there where the paper clip was.

Q. Yes, sir.

A. But it ain't there now, not when you handed it to me just then. Somebody took them off.

Q. Your accountants have been studying the books, I imagine: these books that you have.

A. This is one set, but there are six or eight more of them.

Q. The figures on one of those free slips, dated up at the top it has "August rent," listing names of Grant, Short, and so forth. Did you ever record those figures in a book somewhere?

A. Well, my purpose and idea was to list the record, and I was going to put it in the book when I got around to it. Then I was going to destroy these. In some cases, it looks like in this case here I pinned it on with a paper clip because I didn't have time.

Q. Do you know whether that was ever posted in the book?

A. I don't know, but it was a record. It satisfied me. It gave the exact status of the matter which it states on there. I don't know whether it is right or not. Somebody took it off, it looks to me like, but I thought I had them all pinned. Gem clips are what I used.

Q. How many shares of stock did you own in the Georgia Railroad Bank & Trust Company in 1948, Mr. Anderson?

Mr. Cushman:
Has that been stipulated?

Mr. Wolff:
No.

Mr. Cushman:
No security--

Mr. Wolff:
There is still a question of how many shares of stock Mr. Anderson owned at that time, Your Honor.

By Mr. Wolff:
Q. How many shares of stock did you own in 1948, Mr. Anderson?
A. I don't know.

Mr. McNatt:
That is Joint Exhibit 12-S, is that right?

Mr. Wolff:
Also Exhibit 17 wherein it is plain certain exhibits which were included in Schedule 11 of the net worth statement. The Petitioner now contends that this

stock belongs to Mrs. Anderson and some other stock to his sister, Mrs. Ozzie Faglie. I think it is very material to find out how much Mr. Anderson actually owned at that time.

Mr. McNatt:

Mr. Wolff brought the witnesses here to prove that fact for us. We didn't have to prove it.

By Mr. Wolff:

Q. Did you buy the Georgia Railroad Bank & Trust Company stock, Mr. Anderson?

A. Yes, sir, like anyone else would, I reckon.

Mr. Cushman:

They brought their own evidence, they brought their own witness, they brought the record. What possible light on the issue can that throw when the Government has already brought this much up, when it was recorded in the books and what have you? I fail utterly to see the point of a question of this type. I think it is for purposes of delay.

The Court:

In the first place, I fail to see why the Government would want to delay the case. I do not know what you mean by that. It may be that it is redundant, I don't know. I should think I would have to give the Government counsel the benefit of the doubt and assume he had some purpose.

Mr. Cushman:

Excuse me, sir. Can you give any other reason for redundant questions other than for delay?

The Court:

Unless he has some other purpose that induced him to ask the question in the first place.

Mr. Cushman:

All right, sir.

Mr. Wolff:

Your Honor, I would like to comment on the question of delay. Petitioner comes in today and produces—Exhibit 32, for example, consists of approximately, I think it was twenty-two sheets of paper. Exhibit 33 was in part a duplication of other exhibits offered before the Court, financial statements. There are, however, some penciled notes that appear in there. I think that I am moving along as rapidly as I feel I possibly can. I do feel I should be entitled to inspect some of these documents and see what they are about. I left them in without objection so that would conserve time, and I thought I would be able to develop anything that I wanted to on cross examination.

The Court:

That is certainly true. You have the right to cross examine on anything you please that is within reason.

By Mr. Wolff:

Q. Mr. Anderson, do you know Mr R. E. Adams?

A. No, sir, I don't.

Q. Did you ever buy any stock in the Georgia Railroad Bank & Trust Company, Mr. Anderson?

A. Just whatever the records show.

Q. How often did you go down and buy stock?

A. I would no know. Just whenever I wanted to use the money that way.

Q. When you visited the broker houses, who would you see—for example, at Johnson, Lane & Space?

A. Different ones. Mostly this fellow you had on the stand.

Q. Mr. Mason?

A. Wylie Smith, different ones.

Q. How about Bothwell & Curry? Who did you do business with there?

A. Barton Bothwell is a good friend of mine, especially close. He is dead now. It used to be T. D. Curry & Curry, was the company, and then I think it got to be Bothwell & Curry or Curry & Bothwell. Then it got to be Barton Bothwell by himself, I think, but I am not sure. Barton Bothwell took in Johnny Kilpatrick in with him before Barton dropped out and died, and now it is F. A. Kilpatrick & Company. I have no idea.

Q. When the property that you sold and received security deeds from, did you generally receive a down payment?

A. Well, yes and no. In a lot of cases I did not get the down payment right then, but they promised to pay. I got ten dollars down or fifty dollars down. Maybe the payment was going to be twenty-five hundred dollars, see. And they paid out a little by the month. Some of them never did pay me the down payment.

Q. Who was the executor of your father's estate?

A. He didn't have a will and didn't administer. The Judge told us he didn't see any use of one because we were all over twenty-one. I was the youngest one, and we were all in agreement. He advised us not to administer.

Q. Did you file an estate tax return?

A. I didn't know anything about one then. I don't know what the Judge filed. I have heard of them since, but I never filed one.

Q. Did you ever visit the inspection service office of the Internal Revenue in Atlanta?

A. Yes, sir.

Q. Who did you talk to there?

A. Lowry, I think.

Q. Was that conversation recorded?

A. I think it was.

Q. When did you visit there?

A. I would not remember the date.

Q. Was it prior to the calendar call last year?

A. I would not remember the date, would not remember the time.

Q. Were you ever questioned by the revenue agents to determine whther or not you maintained a savings account during the years involved?

A. I don't remember the exact words or questions. He asked me about my bank accounts. I don't know whether he used the word "savings" or not. I told him Citizens & Southern, and Georgia Railroad Bank & Trust. That is where I did have two accounts one account in each bank. And that is all I had.

Q. Were you ever asked if there was a savings account in your name?

A. I don't remember, but if we had gone into a savings account subject, I would have told him about that one of my mother's being around there.

Q. Do you recall an interview of June 2, 1947, in which you stated you had no savings account?

A. Well, I still don't consider today that I had a savings account. If I did, I forgot about it. Never have drawed the money.

Q. Do you recall saying your father left you no cash?

A. No, I didn't.

Q. You do not recall or you did not say?

A. I did not say it, because he did.

Q. Did you state whether or not your mother had ever given you any cash to invest for her since 1940?

A. Well, she had.

Q. Did she, has she?

A. What?

Q. Given you money?

A. Same money as come out of Daddy's estate, turned over as securities.

Q. What does she do, send you money?

A. No. I kept the whole thing in her lock box and in her bank account and worked off of those statements as you see. See what I mean? I tended to all of it and kept it separate from my business. I put it in a safe where I could show my brother-in-law what was going on all the time, any time.

Q. Where did you get the money to invest in securities in your mother's name?

A. Out of my Daddy's estate.

Q. Got the money out of your Daddy's estate?

A. It was her money and I just invested from one time to another. If somebody called or I took a notion to change it, I changed it.

Q. What did your mother do, give you the money?

A. Well, it was in the safe and we took it out of the safe and I brought it to Augusta.

Q. Where was this safe?

A. At my Daddy's home place, in the house where he lived.

Q. And when did you bring it to Augusta?

A. Oh, I would say a couple of weeks—not trying to be accurate—after he died.

Q. And where did you keep it in Augusta?

A. I kept it around the house or put it away somewhere. I don't know how soon I sent it to the security fellow. I don't remember what securities I bought with it at first.

Q. Did I understand you to say your mother lives on the money from your father's estate?

A. Ask that question again.

Q. Did I understand you to say your mother lives on the money she receives from your father's estate?

A. Either that or the interest on it. I don't know what part of the answer that you have in mind.

Q. Was the money invested?

A. Yes, sir.

Q. Where was it invested?

A. In these securities we have been talking about for some time, or in other securities that were sold and placed in these securities; direct chain on down. That is what the statements are for, to show her how I took—see, we had some real estate loans in there for a while but everybody got rich during the war and started to pay them out, and I had to go to securities which was a weaker interest rate, or lower interest rate I should say. That is why the loans went out, some of them, and the securities went up. But I give her a statement as often as I get these, showing her what I collected from who and where and what became of the money.

Q. You mentioned three brick buildings in your father's estate. How much rent did you get from those buildings?

A. I collected various amounts in various years.

Q. How were the buildings divided up in the division of the estate?

A. Each heir got one store. My mother got one. I got one, and my sister got one; three individual stores.

Q. Your sister, I assume, rents her own store?

A. She rents it to a tenant.

Q. You have nothing to do with that building at all?

A. No.

Q. Collecting the rents or anything?

A. No, sir, I don't. She has a husband, see, and he tends to that.

Q. How about your mother? Does she collect the money?

A. I tended to her money.

Q. You collected your mother's loan?

A. In later years I disposed of it. As long as she rented the store.

Q. Did you go down to Wrens and collect yours and hers, or how was that handled?

A. No, she sent it to me.

Q. Mailed it to you?

A. Yes.

Q. What did you do with the rent money?

A. I charged it to her some way or other. I gave an accounting of it, just as on some of those ten dollar items there, where somebody paid ten dollars.

The Court:

Mr. Wolff, when you get to a convenient point, I think we should adjourn. I will leave it to you, though. Try to reach a convenient place.

Mr. Wolff:

I think I have reached a point right now.

Mr. Cushman:

I would like to ask the Court to extend the time and go on a little bit more. I ask this with a great deal of reluctance. With the utmost respect, I think that my friend, perhaps quite properly, is going to brew up another set of questions and we are going to have another half day of this.

Mr. Wolff:

If Your Honor please—

Mr. Cushman:

Just a moment. You have had your chance.

If Your Honor please, that is all right, but this man is a diabetic. The Government started on him in 1947. He has been to Atlanta, he has been to Augusta, he has been questioned, and he has been cross examined. Every last question that has been asked here for the last two hours has been known to the Government agents and to counsel and to Mr. Haasften. Those facts have been known for several years. I think as a matter of human kindness, Your Honor, that Mr. Anderson should not have to face the weekend with the thought that this gentleman is brewing up another half day of questions. He has not asked a significant question in the last thirty minutes.

Mr. Wolff:

I was going through my notes. I still have a sufficient number of pages, and I think I could go on for quite some time.

Mr. Cushman:
This is the second trip though.

Mr. Wolff:
I beg your pardon. I resent any—

The Court:
Well, it was my thought and hope that perhaps if Government counsel went over some of these matters over the weekend it might tend to shorten his case. As you indicated, there have been some repetitions that might b due to the fact that they have not had an opportunity to go over these exhibits, all of them. You may trust the Court to try to protect the witness against any undue strain. You may have noticed that I have been wanting to have recesses and have been trying to keep the hours short as much as possible considering his condition.
I think we will now adjourn until one thirty on Monday in this Courtroom.

(Whereupon, at 5:35 o'clock p.m., a recess was taken until 1:30 o'clock p.m., Monday, October 17, 1955.)

(Title Omitted.)

Hearing at Columbia, South Carolina.

Date October 17, 1955.

United States Courthouse,
Columbia, South Carolina,
Monday, October 17, 1955.

The above-entitled matters came on for further hearing, pursuant to recess, at 1:30 o'clock p.m.

Before: Honorable Craig S. Atkins.

Appearances:

E. C. Cushman, Jr., Esq.; L. E. McNatt, Esq., and T. R. Spilane, Esq, for the Petitioner.

Herman Wolff, Jr, Esq., for the Respondent.

Proceedings.

The Court:

I want to say that due to the holidays coming up it seems that the Court will probably have to adjourn not later than Wednesday afternoon. For that reason, I would like very much for you to proceed as expeditiously as you can because there is another case scheduled that is estimated to take about a day's time that I would like very much to try before I leave here, if I can. I ask you to do the very vest you can to expedite this matter. I ask each party to do that.

I believe that on Friday we had Mr. Anderson on the stand for cross examination and that you are to continue, Mr. Wolff.

Mr. Wolff:

Before I continue with the cross examination I did want to have one understanding with respect to some of the joint exhibits which have been filed.

The Court:

May I interrupt for just a moment for one other statement. I think that certainly as far as the other case is concerned we could not possibly reach it today. If that is important to any witnesses in the other case, I think they certainly do not need to be here until sometime tomorrow.

Go ahead.

Mr. Wolff:

There are certain joint exhibits which have been stipulated, such as Exhibits 9-P and 10-Q which have certain headings with which the Respondent is not in agreement The figures are in complete agreement to the figures which appear in the schedule, but it has been agreed between the parties that there is no magic attached to the headings, and Respondent in no way has stipulated with respect to the headings.

Mr. McNatt:

That is correct. We agree to that.

Mr. Wolff:

Your Honor, also the Court's decision in the proceedings will probably require a Rule 50 computation.

In the event that a Rule 50 computation is required and that a Rule 50 computation is prepared in accordance with the decision, chances are that there will be increased deficiencies, or there might probably be increased deficiencies, for one year or for several yars over and above the amounts set forth in the deficiency. The Respondent moves at this time that he be permitted to amend the pleadings to conform to the proof.

The Court:

You say that the proof would result in the necessity of amended pleadings?

Mr. Wolff:

I would think it possibly will, Your Honor, because of the shifting of income which we have agreed to in some of our schedules.

The Court:

Any objection to that?

Mr. McNatt:

I don't think so, Your Honor. According to law, you can always amend the pleadings to conform with the proof.

The Court:

That is right. Very well, the pleadings may be amended to conform with the proof.

Mr. Wolff:

With respect to Exhibit 28, which are the vouchers which have been submitted of Accounts Payable, and tied in with Exhibit 21 of the Petitioner, I think that

the Petitioner has generally requested that he be allowed to withdraw the exhibits and submit photostats. Because of one item in there, the accounts of Norris & Foreman Lumber Company, it is requested that the Petitioner be denied the right to substitute photostats because I think there is a certain amount to be gained by the Court seeing the original of those documents.

Mr. McNatt:

I do not know what the exact status of that is, Your Honor. It was my understanding all the time that this lumber company invoice was withdrawn. I see no point in leaving it in the record. I have no specific objection to it.

Mr. Wolff:

I understand it was the wrecking company invoice that was withdrawn, Barton Wrecking Company.

Mr. Cushman:

The wrecking company invoice was withdrawn, the other was not.

If Your Honor please, we can conceive no reason why we cannot submit photostats. Of course, that would be entirely what the Court wants. We abide by the Court's decision.

The Court:

The Court is of the opinion that if the other party refuses to withdraw the original and substitute photostatic copies, the Court should permit the case to stand, after which of course the originals may be returned to the parties. So I will sustain the Commissioner on that point.

Mr. Cushman:

All right, sir.

Mr. Wolff:

With respect to Petitioner's Exhibit No. 19, with respect to the same reservation in the heading there, Respondent is prepared at this time to stipulate the figures appearing for 1942, 1943, 1944, and 1945, such figures appearing on lines "l" and "m" of Schedule 1 of Exhibit A.

With respect to the figures appearing under the year 1946, Respondent is prepared to stipulate those figures, and they appear in line "n" of Schedule 1 of Exhibit A.

With respect to the year 1947, no stipulation is entered into at this time except with respect to the houss marked 400-402 Clement—no, I beg your pardon. We did not stipulate that. We stipulate two of the figures there, the one after Mr. Manney, 406-408 Sand Bar Ferry Road, and we will stipulate the figures 414-416 Sand Bar Ferry Road, Martin. Those figures totaling $4,000 appear in Schedule 1 of Exhibit A, line "o."

Mr. Cushman:

That would be of assistance to the Court to know the direct examination of these figures are correct and that that whole exhibit is correct. I would submit that goes to what the Court thinks about the whole thing, if our friends are willing to stipulate as to figures.

The Court:

I think that is very helpful to have the stipulation.

Whereupon, L. T. ANDERSON, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross Examination (Continued):

By Mr. Wolff:

Q. Mr. Anderson, did you give any money to your mother each year—

A. No, sir.

Q. —for her support?

A. No, sir, I did not.

Judge, can I say something right here?

The Court:

Yes, go ahead.

The Witness:

I am sick. I got sick Saturday afternoon with a heacache and I have took every sedative that the drug store had. I tried to get in touch with the diabetic doctor. A regular doctor is not much good to me because he doctors on general principals and the diabetes may be coming in on a cross-wise.

The Court:

Very well.

The Witness:

I got a specialist in diabetes I expect to go in to see the next day after I get home and see what is causing this headache. I have not been able to stop it. But I might say that for several years—you see, people who live where I do and act like I do, we

don't have no dinners like most people. We eat dinner in the middle of the day like foremans. I don't want to confuse the Court or anything about the way I live. When I come in to dinner, which is at noon, I eat and lay down and take a nap for an hour or hour and a half. I saw no chance to do that last week; I tried to hold up. It is mydesireat this time to go right on through the Court with the full facts of the case until I fall dead. That is just how I feel.

The Court:

I think, Mr. Anderson, if you feel that you are getting sick or too sick to go on, you should advise us.

The Witness:

It is right on top of my head. These walls don't look like they did last week, and the car and my mother don't look like she did. There is a little difference in the way things look.

The Court:

We will go on as long as you feel able. If you feel you are not able to do so, advise your attorneys and we will attempt to do what is necessary. I should say this further: Be calm about your testimony. We are just looking for the facts. Don't be irritated at the opposing counsel's interrogation. Just answer the questions without getting so excited about it.

The Witness:

There is one thing that probably has made me worse over the weekend. A fellow at my age and my condition, I am just not able to judge my own self, but I would like to state what happened to me over the weekend. First, I drove home Friday night. I drove

very slow because I was weak. But I got there and the first news I heard from my daughter was there had been a bunch of inspectors all over the project. They could not get in some houses because people are reluctant about strangers. They told them they were income tax men, but they went under the house and in the house. And I understand, as far as I have heard, they went in all the houses that the people were home. None of them knew the people, we don't know who they were. We just don't know who they were. They never seen them before. That is all they talked about. About as many as four or five.

And the next thing that could possibly affect my health, according to what the bank nicknamed me, there was not the first dime paid last week. Everybody got scared and would not pay a dime. I didn't feel like getting out much. My daughter rode up to my house Saturday at dinner and told me that the Ralindens had moved. They had been there four or five years, and I knowed them pretty well; the best I had.

Then I heard the one on the other end of the project, I can't think of the lady's name that owns it, but they moved. But I didn't go to see about it because I didn't feel well. Well, two families moved and nobody paid a dime. With the condition of my head and all, it may have affected me a little bit, something or other.

And then on Saturday evening late, I take the bus to Quantico. And Saturday evening later on somebody came to me with "The Harlem" and showed me three solid pages of foreclosures in the Augusta paper. As I remember, there was about ten or twelve. It was the normal course, and I got three in that three pages but mine is about that long (indicating)

I say, guessing, see. I should have had four but one of them slipped by in the newspapers and didn't get in. And some of those houses are directly across the street from where my houses are.

And I never heard of anyone getting well of diabetes, or reading in any magazine, and I know what I feel and what I have been through with. I know I could not get a job drawing income. Regardless of this tax case, just forget about the tax case, when you see all those foreclosures and know that a Government man had been there and checked with a local real estate fellow about two weeks before the trial ever started and 650 houses vacant then, and Augusta is a small city.

Then the county furnished and unfurnished apartments, and somebody come to my attention Saturday afternoon that there was an apartment house on Green Street with fifty-five apartments in it, an old big house, and there was not the first one been rented in two months.

So just to see all my life's earnings, not thinking about the case at all, just going up in smoke and knowing I cannot make any more money, see—I believe, Judge, that I was in pretty good shape about twenty-five years ago. I mean, you know my health before I took diabetes, maybe thirty years ago when I was a young man. But I believe this very information would have made me sick if I had not had a headache before I heard it.

The Court:

Yes, Mr. Anderson. As I say, we will not try to put any undue strain upon you.

The Witness:
I am willing to go till I fall dead.

Mr. Wolff:
In connection with his statement, if it will ease his mind any, as far as Respondent's counsel knows at this time, any inspectors that were on his property were not from the Internal Revenue. I don't know where they came from.

The Court:
They had nothing to do with this case?

Mr. Wolff:
No.

The Court:
As far as Government counsel knows, there were no agents sent there by you?

Mr. Wolff:
No, Your Honor.

The Court:
Good.

Mr. Wolff:
I would also like to say that over the weekend I have had an opportunity to consider my further questions on cross examination. I have cut them to the very minimum that I think I could, and I do not think it will take very long. But in the event that Mr. Anderson feels he should take his required rest, I would say that we would forego the further cross examination until such time as he takes a rest and

then bring him back out of turn if they feel it is necessary for him to have a recess.

The Court:

The Court is agreeable to any arrangements you care to make with regard to Mr. Anderson's cross examination.

Mr. Cushman:

I think, if Your Honor please, Mr. Anderson probably prefers to get out from this ordeal as quickly as possible. Is that correct, Mr. Anderson?

The Witness:

That is the reason I said I would go till I fall dead.

Mr. Cushman:

If you are getting to the place where you feel you are losing your grip, please tell us. We will do whatever you say. The Court has told you that and so will Government counsel. If you want to go ahead and try to get over the cross examination now, why Mr. Wolff will go ahead.

The Witness:

Well, I just forgot one thing just now. I don't know whether I can remember.

Judge, for the last several years it has been against my policy and rules to do any figuring with a customer or client or whatever you call him. I am not now. But I don't do it in the afternoon or sometimes in the middle of the day. My books and records are always done in the morning part of the day. That is my best time when I get up, first get up. I very seldom ever go out of the house until—if I got any

men working, I go out and tell them what to do. Sometimes you have to change the occupation of men on account of the weather. It looks like rain or be raining, and you can't paint if it is raining.

Well, I will try a little while.

The Court:

All right. Let us proceed, then, and see how it goes.

By Mr. Wolff:

Q. The farm that was left from your father's estate, who owns that?

A. My mother.

Q. Do you collect the rent on that farm?

A. I don't now. I haven't done it since Mr. Faglie took it over.

Q. I believe Mr. Errington said that was around 1940 or 1939, somewhere around there.

A. I just can't remember the years to save my life. I have not collected a penny of it since Mr. Faglie took it over. I do know this: that Mr. Faglie worked with Mr. Errington. But I heard it four years ago—I don't know, three years or two or six or seven. I just done forgot. But since Mr. Errington left the farm, I don't know the man's name on it, I don't know how much rent he is paying. But I did hear—and this is hearsay—Mr. Faglie say there is one year's rent he never did collect. I don't know if that kind of hearsay is admissible in Court or not. There were two years involved. I think my brother-in-law told me he got one year. The other year he was never able to get out of the tenant or share-cropper, or whatever he had. I don't know whether he was doing share-cropping or had a tenant; I don't know.

Q. Do you know how much it was a year?

A. No. I sold the cotton. There was some red tape about it. But I did whatever red tape was to do about my mother, anyhow. She got all the rent all the time that I had it. And I accounted for maybe some of it or all of it on those statements that have already been admitted in Court, unless there are some—my sister showed me some last night, statements that were left out of the other batch she had at her house. I didn't read them, I felt so bad.

Anyhow, I accounted for my mother 100 per cent, and I think she was satisfied that I did it. And I think my sister was satisfied and my brother-in-law.

Q. You would take cotton in payment of rent and sell the cotton and account to your mother for the funds, is that right?

A. I don't know technically how that was handled because there was some kind of restrictions there; I have forgotten. Something about this, that a share-cropper could take the tenant's cotton out in the loan, but a rentor, owner of the land could not take rent cotton and put in a loan. Sometimes the loan was higher. But I will assure you this: that I did it to the best of my ability. And I didn't keep any money for myself. I didn't give her anything except my time and care; I never gave her any dollars.

Q. How about on the brick building? If I understand it, there were three buildings in rent that belonged to your father.

A. Yes.

Q. You took one, your mother took one, and your sister took one. You collected the rentals for your mother and for yourself. Do you recall how much rent you collected from each of those two buildings or from your mother's building?

A. No, sir, I have not the slightest idea. I think that gentleman the other day, the gentleman from Wrens—his name is Anderson, too. He may be some relation, but if so I didn't know it.

Q. Was that the building that Mr. Anderson testified about? Was that the building that was owned by your mother, and the one owned by you?

A. That is the one that is owned by me and I am still collecting the rent, still paying taxes on it. Mother never had a bit more to do about that building than you did.

Q. How about the building owned by your mother now?

A. Well, I looked after it for her just like I looked after everything else.

Q. Did you collect the money or rent and account it to her on these statements?

A. Unless she was in town and I took a notion to give it to her in person to buy her some hose or shoes and—you know, stockings, something or other like that. She was too old to drive, you know. She would come with my sister and brother-in-law to town. If I owed her any rents, anything, collected anything that is not on them statements, my sister and brother-in-law were standing right there listening, and we concluded that was a settled transaction, agreeable to all parties. And I don't know how much I give her in person or how much I put on statements, but I give it all to her. That is my testimony, that I give her every dime that was coming to her.

Q. How large is Wrens, Mr. Anderson?

A. I just would not know.

Q. How large is the business district?

A. Well, I just would not know how many stores were there at the time that my Daddy died or how many are there now. I just never have counted them.

Q. When you sold property, Mr. Anderson, these in the subdivision in Riverside Park, the ones in Druid Hills and any of the properties that you sold and took back security deeds, is it generally true that the individuals who purchased these properties made improvements on the properties?

A. They did after four or five years. Most of them did not do anything for four or five years. And there was two of them who have not done nothing yet. They was a good long time, and they did it slow.

Q. Whenever improvements were made, is it not true that the security deeds on the properties were made more desirable by virtue of the fact improvement was made?

Mr. Cushman:

Objection, Your Honor. That calls for a conclusion of the witness, and the facts speak for themselves. My friend does not say when the improvements were made. This case stops at December 31, 1948. Also, we submit for the Court's consideration that the valuation of the mortgages for the purposes of this case are to be determined as of the time the new instrument was executed. Right down in Akin County today where it was once white it is now colored, a town which happened from 1953 on. But the point is, we are concerned with something that happened for most of the time the Government claims real taxes.

The Court:

That is true, you are concerned with the value of it at the time the security deeds were issued.

Mr. Wolff:

Well, that is true, and it is also true that we have valued the security deed at the end of each year; so it is not only at the time of the issuance but the value at the end of each year.

The Court:

Now the testimony is that there were no improvements put on the property in the first year, or words to that effect.

The Witness:

Judge, I sort of think that I may be able to clear this a little bit or make it worse. The facts is all I am interested in giving you, I don't know law.

There come a time in Augusta when the whole town was running down, especially my stuff, and it seems to me it has been three or four years ago, the first I heard of it. And they call it the F.H.A. improvement plan. They give them thirty-six months to pay. The first case I heard of was one of my clients. He got some money or got some stuff. I personally know he was a liquor-head and a bum. But how he got it, they called me about him and I told them he was away behind with payments and I was threatening him with foreclosures. I would have foreclosed, but he had six little girls and there was kind of a little age on him. He married a younger woman and she seemed to be somewhat innocent of anything and I just felt sorry for him. He got drunk every weekend.

The F.B.I. was down at my house on the average of five or six times a year trying to clear somebody. One of the F.B.I. men told me, "Every one that you have told us is bad, we have found him bad." I say,

"I know them, I am pretty good. That is what you are going to find out. If I know he is bad, I will tell you."

And these credit concerns, the way they worked it, Judge, they called up in Macon and some place or North Carolina. They would not work through a credit agency. They call me and I tell them the fellow was away behind and he get drunk every weekend and he get in jail and the Judge say ten or fifteen dollars. But he get the credits through.

The Court:

I hate to interrupt, but I hardly see how that is going to the question that was asked.

The Witness:

Well, I can clear that right quick. He got the credit through and put the improvements on the house. How he done it I don't know, being the type of trash he was and me telling the truth.

The Court:

You mean the improvements were put on the first year after he bought it?

The Witness:

No, it seems to me like about four years ago. But after they got started, Judge, they went over the country like a rumor and a lot of people have gotten it, see. Some of them I think might have been worthy, see.

The Court:

Don't you think that is enough on that question?

Mr. Wolff:
Yes.

The Witness:
But that still did not start until about four years ago and that is how some of these improvements got going, actually got on the houses we are talking about.

The Court:
Yes.

The Witness:
It was under some plan. I foreclosed on several of them where this second mortgage went just like that. The Government F.H.A. or whoever it was didn't say a word about it. But I told them, Judge, when the man was good. And there ain't but two good ones on my property, and one is my son-in-law, that I would trust for grocery bill. That is just how I feel about it.

By Mr. Wolff:
Q. Mr. Anderson, the financial statements which were filed by you with the bank, were they generally true and did they present a correct picture of your financial condition at the time submitted?
A. I will tell you about that, if the Judge will allow me to.

Mr. Cushman:
Just a minute. The financial statements have been offered in evidence. Mr. Anderson testified he submitted financial statements. They were submitted for the purpose of obtaining credit, and I think that is all we need to go into.

The Court:

I think the Government has a right to ask whether that purported to be a complete statement of his financial condition.

Mr. Cushman:

All right, sir.

The Witness:

I will tell you. Immediately after—I will give you how the thing come up and make it short, Judge. Immediately after the Georgia Railroad Bank & Trust Company, which had another name at that time, sold me twenty-two houses for fifty dollars down, a long time ago. I know they wanted to get rid of the houses. But it was not fifty dollars a house, it was fifty dollars on the whole twenty-two. They had trouble about renting. It was about the same class of property we have been talking about during this case. I told them, I made them a proposition and they sold them to me. I think they gave me a warranty deed and took back security deed. But this fellow Bert Maxwell was a big actor. He is supposed to be up around a million dollars, but he was plain as an old shoe. He used to get me to go out in the woods with him around his pond, and I got in with him, see. Bert Maxwell and my boss were very friendly. He was in the furniture business and my boss was in the jewelry business. Among it all I considered a bit, but I didn't play golf with them. He knew every pro around in a way. If it was possible, he took me with him.

I called him at one time a guardian because he helped me plan. And he had some of this same type property, and he knew it. He was a real smart man. And he would lend me money any time I wanted on

plain note on ten or twelve thousand dollars. He didn't do that at first, I knew him for a while. He was a guardian to me.

I didn't know anything about making up a bank statement. I had this property and it so happened that he and I owned a piece right side by side out somewhere in town. I went to him to—Judge, if you would not mind me saying so, I hate to admit it, but the first financial statement I copied from a bank statement and I made up my assets and liabilities to be the same thing. I didn't have the first penny. The first one I made up at night, after I got off from the store, and I talked to him about it and he started laughing. After I found out better, I was ashamed to tell anything. I am actually ashamed to tell the Court that.

But Mr. Maxwell, getting back to what you want, after I took those twenty-two houses which he told me to buy, see, on that price and terms and everything, and he helped me out a little, then I got to going to him about once a month. Every time I left him he would say, "Mr. Anderson, come back any time you think I can help you." Well, that was a free horse but I rode him for years. He had some things he wanted done and I done some things for him, too, see.

The Court:

Now do I understand, then, that he made up the financial statement?

The Witness:

He didn't actually write the figures, but he took a list of it. And where I had money in the house, he cut it down. He cut it down. The reason he told me

he cut it down, he said, I resented it at first. I didn't like nobody. You don't like cold water, especially a young business man trying to be a business man. I resented it. And he said, "Anderson, you are not selling the bank the houses. The bank don't think nothing of your kind of stuff. They don't like it."

The Court:

You told him the information and he made up the statement, is that the idea?

The Witness:

He said, "Put this down"—and I think it is part of the evidence. He said, "Anderson, I know you will work that thing out, but knowing this is old line credit you are working on now"—that is what he told me, which I knew that was true. The first I knew of open line credit was to walk in a bank and borrow money on security. So they got some young fellows that didn't understand, just like you do, and they do not get half that money if you was to pass away and put on your debts.

The Court:

So he valued these things.

The Witness:

He valued these things on a piece of scratch paper and I put them in shape.

The Court:

And I think the real question now is, Does that purport to be all your assets at that time, valued in that way?

The Witness:

Let's see now. All my assets are valued in that way. Why, he didn't have anything to say about the cash on hand or anything like that.

The Court:

But I think the question—

The Witness:

The real estate—

The Court:

Is there some value on those, what are they called, financial statements, for all the assets you owed at the time the statement was given?

The Witness:

I saw one in Mr. Spillane's office that Mr. Maxwell made up. It seems to me my cost was seventy-odd thousand dollars or sixty-odd thousand, and Mr. Maxwell purported that thing down to about $53,000, see. But Judge, let me say right here Mr. Maxwell died in 1946 and he was the best friend I ever had, I think, excusing my Mother and Daddy and sister. One of my sisters died before I got up in the business world. After my Daddy died I went on to the bank every year. I knew the value of these mortgages was not any good, and I told the bank. That man at the bank, who was a right young fellow and looked like he had not been employed but a year or two, making up statements or anything, he put them down. And I give to the bank after Mr. Maxwell died, using the same process of not ever estimating any mortgage or any paper for more than the real value.

The Court:
I see.

The Witness:
They taught me, in that connection I was told that the mortgage when you sell it on that scale, I was told by this fellow it is never worth no more than the house behind it, especially like in my case my lawyers told me—I don't know anything about law except what the lawyers told me—that I was taking the short form security deed and I could not get a deficiency judgment; and if I happened to die tonight or now, "I would not give you ten cents for a deficiency judgment on anybody that is buying this class of stuff." My deeds do read short form, but the lawyers told me that is why they are using the short form, because the deficiency judgment —

The Court:
I think that is enough on that question.

By Mr. Wolff:
Q. Was your father's will probated, to your knowledge, Mr. Anderson?
A. Well, I will say it again—I think I told you three times last week—if he ever had a will, I never did see it or hear tell of it.
Q. His estate was never administered by a Court to your knowledge, was it?
A. Not to my knowledge. And if I may say so, Judge Walker was a retired Superior Court Judge and was given up to be one of the most competent lawyers in that section of the country. He said, "You are not fussing, you are not in disagreement, and why go to that expense?" And we wound up the es-

tate. From the time my Daddy died, or before he died, on up until I left my Mother out there half hour ago—something or other, I forgot what time I came in here now—we have never been in disagreement on any part of the estate or anything else. So why administer on it? I don't know why, but the Judge thought—that is the way he done it.

Q. Were any of your houses ever sold with a G.I. loan attached in the subdivision?

A. Yes, sir, there was some sold before the G.I. got to inspect it. They let you build a house and call a fellow in. I could have sold a lot of them, but there was only one inspector would pass them and he didn't know what it was all about. But the inspector that really knew real estate, he turned them down as fast as they come to him.

Q. Mr. Anderson, which records did you take to Mr. Bedingfield and when?

A. Well, the first records I carried to him, unless I had some then about 1944, that first afternoon I went to him—the first records I carried was my books.

Q. And when was that?

A. That was in June of 1947.

Q. That you carried your records, books to Mr. Bedingfield?

A. I carried my books. I had some records that I did not know were part of my books that were in my desk. And I was up in the air, I didn't know what I had done wrong. I thought I had shot Lincoln, they accuse me of shooting Lincoln. I was up in the air, just took my books up there and never thought to get the slips of paper in my desk.

Q. Did I understand you to say also the other day that when you carried those records to Mr. Beding-

field on the same day, while you were still in the office a phone call came in and Mr. Bedingfield directed his son to carry those records over to Mr. Orr?

A. I am sure that was the way it was. But if I am mistaken, and I could be mistaken, it has been a long time ago—that either a phone call, and I think I am right about the phone call. Mr. Bedingfield happened to think—you reach for your fountain pen and you don't see it, and you think you left it over yonder on your desk—it came to his mind like that, and he directed—but I saw the books leave the office in young Mr. Bedingfield's hands and I never seen them no more for thirty-three months, thirty-two months.

But I remember Mr. Bedingfield did scan through them, but I don't think he saw the first thing so far as records or anything. The scanning through was something like a fellow walk to a newsstand and turn a page or two and happen to think, he see a bus coming.

Q. Did you ever state to the agents that your father left no cash in his estate?

A. No, sir, I did not because he did.

Q. In investing money in securities in your mother's name, where did you get the money?

A. It came out of my father's estate. But she has a loan there, Jack Mimms, W. O. Avery. She has various loans. I forgot the names.

Q. You stated that you always kept your bills small. I think you said ten or twenty dollar bills. You mentioned that you were liable to get in trouble if you asked the bank for bills of one hundred dollars or more.

A. I had heard that, so I never did ask for any. But I accepted a few bills now and then for one hundred dollars in trading around but I didn't keep them especially. I went ahead and spent them.

Q. What kind of trouble did you expect to get in?

A. Well, I just heard trouble. I didn't investigate anything about it. I always heard that if you deposited large amounts of money that you would be in trouble, or if you checked out large amounts of money.

Q. Was that trouble with income tax people?

A. They didn't say who. I didn't investigate. I was going off one time and would have liked to have had one hundred dollar bills on account of keeping down books on business, and the bank told me they didn't have any, didn't keep them.

Q. When you borrowed from Mr. Senn, did you give him any security?

Mr. McNatt:

I went into that for four hours Friday afternoon.

Mr. Wolff:

This question has never been asked.

The Court:

I don't remember the question.

Mr. McNatt:

I recall the very lengthy examination that I finished up and then went on to another subject.

The Court:

If this question has not been asked, I see no reason why it cannot be asked now.

The Witness:

I gave him two notes.

By Mr. Wolff:

Q. Other than notes, did you give him collateral or security?

A. No, sir.

Q. Do you recall ever sending photostats of the canceled notes to Mr. Bedingfield?

A. Well, I just would not recall now whether I did or not.

Q. Do you recall ever sending him a large group of photostats?

A. I just would not recall. I had so many lawyers going backwards and forwards. I tried to give each one of them each thing they wanted. I just would not recall.

Q. I show you a letter dated February 21, 1950. Is that your signature on the bottom there?

A. Yes, sir.

Mr. Wolff:

This is a letter dated February 21, 1950, being a letter from Mr. Anderson addressed to Mr. Marion Allen, the income tax investigation, sending by way of Mr. Bedingfield $10,000 to apply to Mr. Anderson's account. I offer it as Respondent's Exhibit CC.

The Court:

Any objection, Mr. Cushman?

Mr. Cushman:

I am sure my friend would not mind telling me the relevancy of the document.

Mr. Wolff:

I think, Your Honor, Mr. Anderson previously testified that he paid $10,000 on his 1947 income tax li-

ability. I think this letter, written at the time the $10,000 was submitted, at least shows how it was to be applied.

Mr. Cushman:

Is that an issue in this case, if Your Honor please?

The Court:

Does it apply?

Mr. Wolff:

Yes, Your Honor. Since his 1947 tax is in issue, I believe this perhaps has some relevancy to the matter.

Mr. McNatt:

During the mix-up he failed to make a 1947 return, but he did make a 1948 return and that was paid.

The Court:

I cannot see how it can harm anyone.

Mr. Cushman:

I am not going to agree to its admissibility without making all reservations regarding the motions to strike and contingent entirely on the relevancy being established in this case and its competency and so on.

The Court:

It is competent as far as I can see. The witness testified it is his own handwriting. The question goes to the materiality, relevancy.

Mr. Cushman:

If Your Honor please, the question was never asked the witness if that was the letter he wrote. He said it was his signature on there. But be that as it may, if we may reserve all the rights to have the letter stricken later, at this time we will not—

The Court:

You may move later if you care to; otherwise it is in evidence.

Mr. Cushman:

Subject to our reservations, we will not object at this time.

(Respondent's Exhibit CC marked for identification and received in evidence.)

By Mr. Wolff:

Q. Is this your signature, Mr. Anderson?

A. Um-hum.

Q. Your answer to that was yes?

A. Let's see what is wrote up here.

Q. I will direct you to the question.

A. Read that for me.

Q. Question 14: "Do you know how much cash you or your mother received from your father?" Answer: "None."

A. No, sir, I didn't sign a paper with the word "None" on it because it was not true.

Q. You previously said that is your signature, did you not?

A. Yes, sir. But if you will loan me a pencil, I can write your name right under here or my own, either one. I did not sign any statement that I didn't get any money from my Dad's estate.

Q. Look at page 1. Is that your signature, or does it appear to be your signature?

A. It does.

Q. Page 2, does that appear to be your signature?

A. Yes, sir, it does.

Q. Page 3, does that appear to be your signature?

A. Yes, sir, it does.

Q. And page 4, does that appear to be your signature?

A. Yes, sir, it does. Well, I have not read very much of anything except one sentence, and I didn't answer "None" to any of those figures. I think I might have answered "None" to some of them. I don't know what the questions are. But that one question I didn't answer "None," and that is all the questions I have read.

Q. Do you recall ever signing these papers?

A. Well, I don't recall when I signed them or anything. It looks like my signature, though, but I didn't sign any statement that I did not get any money from my Daddy's estate.

Mr. Wolff:

For identification, Respondent's Exhibit DD.

(Respondent's Exhibit DD marked for identification.)

The Court:

Do you want counsel for Petitioner to see it?

Mr. McNatt:

May I see it, Mr. Wolff?

The Court:

I think we ought to take a five or ten minute recess.

(Whereupon a short recess was taken.)

The Witness:

Judge, when he gets through with me, can I go to the hotel and lay down a little while?

The Court:

Surely.

By Mr. Wolff:

Q. The maturity date on your two notes with Mr. Senn is in April of 1949 and May of 1949. As I understood your testimony, you paid him $31,000 the first payment, sometime in 1950. Was there any particular reason why you delayed payment until after maturity date?

A. Well, I thought when I borrowed the money I was going to keep it as long as I wanted to. I do that with the bank. They put down ninety days or whatever I want, but I go back and renew it. It is customary with us fellows around Augusta to make a thing one year, something like that. Have to pay interest on it.

Q. Did you ever renew these dates?

A. I did late in 1950.

Q. That is when you paid $31,000 and took the note worth $34,000, I believe you said.

A. That is right.

Q. Mr. Anderson, I show you your 1945 financial statement, Petitioner's Exhibit 33. The third sheet thereof, being a short yellow sheet, lists as your assets thirty-four shares of Georgia Railroad Bank & Trust

Company stock. Did you own all of that stock at the time?

A. Yes, sir. Whatever you see on there, I either owned it or thought I owned it. I made it in good faith.

Q. These red figures, can you see those red figures on there, over to the side?

A. Yes, sir.

Q. They were added by your accountant, were they not?

A. I don't know about that.

Mr. Wolff:

Your Honor, on a lot of these financial statements there are apparently some red figures that have been added on here, and I think they were made by the accountants. I wanted to clarify that, if possible.

Mr. Cushman:

The red figures were added by the accountant.

The Court:

Is it stipulated between you that on all these the red figures were added by the accountant?

Mr. Wolff:

On those particular statements, from the figures what he had and what he found.

Mr. McNatt:

He has a cost maybe in round figures. The actual cost is odd figures, three or four dollars difference.

The Witness:

Judge, may I ask a question?

The Court:
Certainly.

The Witness:
I am confused. I am not trying to go into this thing, but he said a while ago about an affidavit I signed. I remember signing some blank forms, but I did not do that until Mr. Bedingfield told me to. Each year when he come back, I think it was in January, I didn't sign anything unless Mr. Bedingfield said so. It seems like 1948. I remember it was cold weather, first part of the year. Mr. Bedingfield said that was just a matter of form. I know what that means, keep some kind of something from running out.

The Court:
Statute of Limitations?

The Witness:
That might have been it, I don't remember.

The Court:
Those were waivers of the Statute of Limitations, I assume.

The Witness:
Well, I understood it was something or other meaning just the same thing or exactly the same thing from Mr. Bedingfield before I signed anything, but I didn't read but one sentence and said I didn't get nothing from Daddy's estate. But it seems to me like —I won't be sure—this thing is pressing around on top of my head, but it seemed to me like I made a statement to the bank that I intended to do it, if I

didn't, that the assets in Dad's estate was not included in this statement. But I didn't see that just now, and I don't know if it is in there, but I intended to put it in there. I am asking the question, Is it in any of the statements? Does any of them statements have—

Mr. Cushman:

I think there is a statement in evidence that this financial statement does not include the assets received from his father's estate, or words to that effect.

The Court:

You mean he testified to that?

Mr. McNatt:

The financial statement in evidence.

Mr. Wolff:

I have the financial statement. I did not understand what Mr. Anderson was searching for here.

The Witness:

This financial statement became—the two were entirely different. That is the best I can put it together in my frame of mind.

Mr. Cushman:

Is that what you are talking about, the 1947 assets from Dad's estate not included?

The Witness:

Yeah, that is what I thought was in there. I am glad you showed it to me.

Mr. Wolff:

What financial statement is that?

Mr. Cushman:

1947, Petitioner's exhibit for the year 1947.

Mr. McNatt:

The one for 1940 has the same information on the assets inherited from Father's estate not listed in this statement.

The Witness:

That is right, Judge. That is what I wanted to bring out.

The Court:

Proceed, Mr. Wolff.

By Mr. Wolff:

Q. Mr. Anderson, I show you the financial statement for 1941, Petitioner's Exhibit 33, the third sheet thereof, wherein there are listed loans and the name of Brooks twice. Do you see that name, Mr. Anderson?

A. Yes, sir.

Q. Is that Mrs. J. S. Brooks?

A. Well, Mrs. J. S. Brooks died in 1928, I believe. That was my sister. But there are a lot of Brooks in that community and I have had dealings with several of them.

Q. Is that the same individual listed there as appears on Exhibit 14 as Mrs. J. S. Brooks, being a security deed of your mother?

A. Well, let's see. For 1940, why she died in 1928. I am sure she didn't sign any paper, but Mr. Brooks

—I had more loans as I remember. You got down here $295 and $40, and over here you have $200.

Q. Would your testimony be, Mr. Anderson, that you do not know whether they are the same individuals?

A. Well, the amounts are not the same, but on the occasion of that Skinner Road property, Mother actually paid that loan. And when the loan went bad I was afraid my brother-in-law would censure my ability to, you know, to transact my mother's business, so I paid her the face of that loan and took it over in my name. And that may have happened in this case.

Q. The security deeds were in your name, were they not?

A. Yes, sir, in my name because she would not go to the post office and the notary publics were all gone off and I could not get it. But at the time I made this statement I actually owned these loans. And any of Mother's statements that have Brooks on there, I did shift them sometimes with the idea of sending her a statement so her money could be drawing interest because I could be doing something else with mine. It has been shifted a few times and always, if I recall, just right when the loans went bad.

Q. Mr. Anderson, I show you the 1944 financial statement, Petitioner's Exhibit 33, wherein there are certain loans listed The first two listed are Mrs. Gibbs, first loan, and ditto marks underneath and second loan. There is also listed on that list McKnight $1,000. There is also listed on there "Johnson was $700 minus $150, $550." Are those two notes listed there as being Mrs. Gibbs, are they Margaret J. Gibbs?

A. Well, I did business with more Gibbs' than Mrs. Margaret, and I had a series of loans with her in different principals.

Q. And Petitioner's Exhibit 15, Mr. Anderson, I believe you have testified that there was a deed to Margaret J. Gibbs in the amount of $1,000; a second one to Margaret J. Gibbs in the amount of $760. Those two you have testified belong to your mother, I believe. Also one to M. H. McKnight in the amount of $1,000 as belonging to your daughter. There is also a Helen and Jessie Johnson listed there with a security deed in the amount of $780 which you testified also belonged to your mother.

A. Well, at the time I made this loan it was right. I mean when I made this statement it was right. But just when it shifted over or—

Q. As I understand your testimony now, you might have transferred it back and forth between you and your mother.

A. And daughter, too, in order they could draw interest. But there was a series of loans with a different Gibbs. I remember one was from Groveton and she came on to Augusta to borry money. I just don't know. I do know whenever I put anything on this statement it was exactly right for banking purposes, to my ability.

Q. Yes, sir. Mr. Anderson, I show you again the 1941 financial statement wherein the name Wahl appears as being a loan that you have made in the amount of $700. In Petitioner's Exhibit 16 there is a note in the amount to Annie B. Wahl in the amount of $700. Is that one and the same note?

A. It seems like there was more money than that involved in that thing, but that shifted the same way.

Q. That one shifted the same way. What appears on that statement is correct, the financial statement?

A. So far as I know, unless I made an unintentional error.

Q. Yes, sir. I show you, Mr. Anderson, the 1945 financial statement, Sheet No. 4, Petitioner's Exhibit No. 33. Penciled at the bottom is the name of Mrs. Whitecotten, $315. I show you once more Petitioner's Exhibit 16 wherein the Mrs. L. B. Whitecotten note in the amount of $315 is listed.

A. Well, that shifted.

Q. That was another one that shifted back and forth.

A. Mrs. Whitecotten has a little more loans there than actually money passed, but she shifted one loan to another piece of property and got cash out of that to some extent, as I remember. I know she was a pain to do business with.

Q. On that same sheet there are red figures again. Do they appear to be the figures of your accountant?

A. Well I was not with him when he put them on there, and I just don't know.

Q. Up at the head of one column appears R.A.R.

A. I figured I had Mother to feed anyhow and I better use the money any way I could. That was legitimate and right according to the pleasure of my brother-in-law. I had to please him because if I did not feed her and she did not have money enough to feed herself, he would have her to feed.

Q. Did I understand you to testify previously though, Mr. Anderson, that you did not give your mother any money?

A. Yes, sir. I never gave her any except what was coming to her. I didn't have to. I would have if she had asked me. I might have asked her what she was going to do with it, see if I thought it was sound, because I didn't think she was competent to tend her own business, if she was my mother.

Q. With respect to the Senn notes, Mr. Anderson, how long did Mr. Senn live in Augusta? Do you know for sure?

A. No, sir, I do not.

Q. Was he there in 1942?

A. I do not know.

Q. Do you recall whether he was there in 1943?

A. I don't remember the dates when he came in or went out. I talked to him a whole lot, too.

Q. I believe you testified you knew him for approximately five years before—

A. Seemingly

Q. —before you borrowed any money from him. Was he living in Augusta at the time you met him?

A. Yeah, he was in Augusta at the time I met him.

Q. And was living there?

A. I don't know where he was living. I met him through Mr. Maxwell.

Q. And you also testified you borrowed the money from Mr. Senn, both notes, prior to his leaving Augusta. Do you recall when he left Augusta?

A. No, sir, not exactly. He left sometime afterwards.

Q. Do you recall approximately when you paid off Mr. Senn after the next payment in 1950? You paid $31,000 in 1950, did you not?

A. Yes, sir, 1950.

Q. And when did you pay the rest of it?

A. Well, I paid it at different times. I remember Mr. Spillane asked me specifically about that. He went over it carefully.

Q. Do you recall what you told Mr. Spillane?

A. As I remember, I was in Mr. Spillane's office and he called in Louis Thompson. I believe it was

Louis Thompson, some auditor down the hall there. And Louis told him he did not know what I done with the money but I took in $81,000 or thereabouts, or some figure in that neighborhood. I could have paid off the debt if I wanted to, I reckon. I just remember that vaguely, I don't remember the figures or don't remember positively if it was Louis Thompson. But we had discussion on it.

Q. Have you completely settled your debt with him?

A. I owe him the interest.

Q. Did I understand you to say that the interest was forgiven on these two notes that you have here?

A. I believe he used the words, "Let that go for a while, I will see you later."

Q. When did you finish paying off the principal on those notes?

A. I don't remember.

Q. Do you recall about when the last payment was?

A. I expect Mr. Spillane can tell you that. I went down to Savannah pretty soon after, maybe he can tell you.

Q. Mr. Anderson, the safety deposit box at the Georgia Railroad Bank & Trust Company, whose name appeared on that box, do you recall?

A. Well, it was my understanding it was L. T. Anderson, or L. T. and Mary Anderson, or L. T. or Mary Anderson, or Mary Anderson and L. T., or vice versa.

Q. Do you know whether your sister's name was on that box?

A. If it was—I don't remember anything about my sister's name being on there, but I was aware of the fact that she had securities in there.

Q. Did you go there by yourself, or could you go into the box by yourself?

A. I sure could.

Q. And your mother could go in there by herself?

A. We didn't allow Mother go go in there by herself, in all respects to my Mother, because we did not think she was capable. The agreement was when we put the stuff in the box she would not go in there unless Albert Faglie—who is Mrs. Faglie's husband —or Mrs. Faglie, or myself was with her. But I knew my sister had her stuff in there, and I didn't see why we should not let my sister use it. We were supposed to use the whole box if we wanted to.

Q. You testified that you attempted to borrow some $15,000 from the C & S Bank and that you offered to put up I believe somewhere in the neighborhood of $90,000 on these security deeds. Is that what it was?

A. No, sir. To the best of my recollection it was $108,000. I think I gave that to you last week. Under the form—I don't want to tangle this stuff up, that kind of net worth you use.

Q. I assure you I am not trying to trick you into any figures or anything. I did not recall the amount myself. If it was $108,000—

A. I intended to give the bank, I carried them to the bank. I went and bought some new envelopes and put each mortgage and the insurance policy and the notes all in there and had them fixed up nice and everything. I won't be sure, but as I remember I had some form of figuring, and rather than the bank carch me doing anything wrong, if it was, say, a thirty-one fifty note—I didn't figure out to the penny how much the fellow owed—but I tried to drop down and put an amount on the outside of that envelope that I was sure that he owed.

The Court:

The remainining balance, as I remember you said the other day.

The Witness:

I didn't figure it like when they want to pay up. Once in a while I have had two or three people come and pay up their debts and I tried to figure out to the exact penny then.

By Mr. Wolff:

Q. Did I understand you to testify that the bank refused to loan you any money on those deeds?

A. Yes, sir, that is exactly right.

Q. It was $108,000 as I remember.

A. And that was the net amount.

Q. When was this, Mr. Anderson?

A. Now just that year, I don't know.

Q. Was it after 1950?

A. Yes, sir, I believe it was. But the security behind that paper was supposed to be worth more in 1950 than it was in 1947 because I had collected some. Of course like it turned out now, ain't none of it no good, but I think a $3,500 note with three years paid on it, what is left is a little stronger than it was when it started.

Mr. Wolff:

Your Honor, I have only three or four more questions. I have requested a document from the Petitioner's counsel, and I can complete my examination when I receive those.

Mr. McNatt:

Mr. Barr has gone after that document.

The Court:
Would you like to recess for a few minutes while we wait for that?

The Witness:
I would appreciate it if you go on. Maybe I can stand a few minutes longer. I am going to try something else at the drug store this time because I am getting in considerable pain. Can I stand up a minute, Judge, and get some of this cramp out of my leg?

The Court:
Anything you want.

Mr. Cushman:
How about a five minute recess?

The Court:
We will take a five minute recess.

(Whereupon, a short recess was taken.)

By Mr. Wolff:
Q. Mr. Anderson, some of your records which have been presented to the Court in accordance with the motion to produce, there is contained a copy of a 1947 income tax return to the State of Georgia. On that return you list notes outstanding, and included on there are the names of Ruth Cooper, M. J. Gibbs, Jack Mins, Guessie Bently, J. W. Browning, Jessie and Helen Johnson.
A. I think I can explain that. These papers were all made out in my name. This thing here was not made out by me, it was made up in Atlanta, see. I didn't know how to make out one of the things and

I figured, in fact I didn't know anything about this for a long time.

Q. Who prepared that return?

A. It was made up in Atlanta, I reckon. I got it by mail. This is not my writing or anybody that I ever hired that I know of. But I can say this: that I didn't see at the time and don't see it yet, whatever tax I actually paid on this piece of paper, see. It would not make any difference—it is a tax on the mortgage as I understand, and it would not make any difference if it belonged to me or Mother. If I go to Atlanta and take a lot of time and shift it over in Mother's name, it would be the same tax right on. But since you mention it, I forgot to charge Mother the intangible tax that I paid for her on this. It is the first time I thought about it. So she owes me—well, I ain't going to bother with it now, but she owes me the intangible tax for whatever I paid on her security. That is the only thing that I remember that I did not charge to her.

Q. On page 4 of that same return, Mr. Anderson, there is listed fifty shares of AT & T stock. Did they all belong to you?

A. Well, I don't think I ever noticed this. As I remember, I just paid what the man said and didn't read it over. But I figured he was right. At the time I made up my statement, financial statement, I may have changed this some. I never read all this stuff over carefully, I just looked it over and saw it looked all right. I trusted the state that whatever they done was right.

Q. How about the forty-five shares of Savannah Sugar? Is your testimony with respect to that the same?

A. Well as I remember, I had some of that and Mother had some of that. It occurs to me that Mother's was in her name. But I may have sold some of mine and never did change it with the company, see. If you look on them statements I sent her, if I sold her any I put it on them statements, see.

Q. Did you have any statements after 1944 to your mother?

A. I think I had them all the way through but I didn't keep a copy of them. After I saw my brother-in-law and everything looked like it was all right, I destroyed the copies of them, all except one or two. I happened to run across one or two in some old papers, and I don't know what she done with them.

Mr. Wolff:

No further questions, Your Honor.

Re-Direct Examination.

By Mr. McNatt:

Q. I believe there was some information here about an O.P.A. case down in Brunswick. What did they do on that case?

A. Well, they claimed they sent me a notice by mail but I never did get it.

Q. What was the ultimate outcome of the case? Did they put you in jail or fine you?

A. No, they never did arrest me. That man from Washington said they took out some kind of thing because I was not there, but I told them I didn't know anything about it. And he said, if you want me to tell this. Do you want me to tell what he said?

Q. Yes.

A. He said, "We have that kind of Court in Augusta. If they had been fair in Augusta they would have held it there, but they wanted you to go a long ways to Brunswick."

Q. Did you ever pay any fine or serve any time so far as you know from the Brunswick hearing?

A. "Come up here, I want to see you," He called me up and told me to come uptown. When he first saw me he patted me on the shoulder and said, "Son, you are out of everything. You ain't done nothing wrong. I have checked the Court records down at the Courthouse and I have checked with the people, and you ain't done nothing wrong. And I am awfully glad, too, because I am going to cause all this proceedings"—he called some round about name.

Q. I think we can shorten this a lot if you will just answer this question: Did you ever pay any fine or serve any time, or did anything happen to you because of the Brunswick case?

A. Never paid a penny. Never was asked to pay a penny. But that pat on the shoulder was the finest pat I ever had, I thought.

Q. Now Mr. Wolff has questioned you quite extensively on these financial statements. You previously testified as to certain cash on hand and as to certain borrowed money. I ask you why that cash was not put on the financial statements.

A. Well, I didn't think it was right to open line credit because any assets that the bank could not get hold of in case of my death, I didn't think was fair. I still don't think so.

Q. Are you through?

A. Yes, sir.

Q. You mentioned something to Mr. Wolff about a short form deed and a deficiency judgment. What

agreement, if any, did you have with your purchasers of your property and what was the information that you had from your lawyers as to the short form deed?

A. Well my lawyers, of course now in a lot of cases they didn't care anything about the lawyer—they used the lawyers I was using—but in some cases they referred to various lawyers in town. It was their business. So my lawyer told me, "I will use this short form because that fellow ain't no account no how and could not get a deficiency judgment, and all you want is the house back." And I thought that he knew exactly what he was talking about.

But in order to sell these fellows, they are superstitious and everything else, so here is the exact language that I put to these fellows. Some of them thought the market was going to bust like it is busting now, but they thought it was going to bust in six months and that was six years ago, 1947, 1946, and 1945. See, there has been quite a change there. I mean it is just now busting, see.

So they would be skeptical. Most of my buyers thought the house was not worth the money. They see it, see, and they wanted a chance to get out of it. So here is the language I used, and with my reputation around Augusta they believed it. And I meant just what I said, and I done it. And here is what—

Q. Just as short as you can now. We do not want to take up the time of the Court. Tell us the essence of the agreement.

A. I told them, "When you get ready to move"—some of these fellows was going to move and would not move. First I told them, "If your payments are up to date, if you have a payment that you paid the first of the month and everything is up to date, I

will give you $100 back." Because some of them did not pay $100, but I told them, "Now if you have paid these monthly payments and $30 a month, $35, and this $10 a month on the side, if you have paid me the full $100 by the time you get ready to move and your payments is up to date, I will give you $100 back if you will sign a paper back to me, a warranty deed."

The people uptown—you see, that sold for $10 on it and I was going to pay it back. And J. B. White and those merchants could not tell whether this fellow was throwed out or give up or borrowed money or lost money on his transaction by the public records, and that suited him fine. So if he paid in the $100, see. Some of them never did pay it all in. If he had paid seventy dollars, I would not give him but the seventy dollars back.

Q. Let me ask you this to shorten it. Have you ever taken a deficiency judgment on any man that abandoned yo property?

A. Never have. I never asked for one.

Mr. McNatt:

I would like to ask Mr. Wolff if he intends to introduce the statement that has been identified.

Mr. Wolff:

I don't know at this time. I probably will.

Mr. McNatt:

If not, I would like an opportunity before the evidence closes to introduce it as our exhibit, providing Mr. Wolff does not introduce it.

That is all, Mr. Anderson.

The Court:
Thank you, Mr. Anderson.

The Witness:
Can I go now?

Mr. Wolff:
I have one question, or maybe two.

Re-Cross Examination.

By Mr. Wolff:

Q. You continued to borrow money from the banks in 1946, 1947, and 1948, did you not, Mr. Anderson?

A. Well, when I got this new money in I reduced my loans as fast as I could get to the money and as fast as I thought it was practical. There was some transactions, temporary transactions where I would let fellows have money to buy a piece of timber provided he would sell me some lumber. Those were very scarce, verbal agreements. And to my positive knowledge, the best I remember, all of these transactions were with the string on you right quick, you know. They were paid up and everything was all right.

Q. Mr. Anderson, on your deficiency judgments you stated you had never obtained one for anyone who had abandoned your properties. How many abandonments have you had?

A. Well, I have two kinds of abandonments. These two that happened last week they just moved off and said nothing. Some of them you have to threaten and they will move, and some of them you have to start advertising in the paper and they will move. Some of them you can go to and give them ten dollars and

they will sign a warranty deed back for you. Some will sign a warranty deed with nothing, but over half of my houses has been foreclosed or taken back or given up.

If the Court will let me, I will give you two or three sentencee there that might help or worsen, one —I don't know which. Sometimes I know a fellow is going to get out. He done told me positive he is going, and I will go around. I am gradually having calls for property, see. You know, people call me up and want to buy a house or want to rent a house or something or other, and I will get these two people together of my own accord and take time away from my work—of course, I ain't doing much except looking after my place.

Q. Were you foreclosing?

A. I didn't have to foreclose because I got this fellow who said he was going to give up to turn over to another fellow and the public records to show he sold it and—

Q. How often did that occur prior to 1948?

A. It occurred ever since I started selling. That is the reason why Mr. Spillane has jacked me up two or three times, or his man. I give him the customer off my box and he goes back the next year to compare, see if I paid taxes last year, and the customer is altogether different. He told me to cut that out and give him the number of the house, but some of the houses ain't got no number.

Q. With respect to the action in Brunswick, Georgia, did you pay the Court costs?

A. Not that I know of.

Mr. Wolff:

No further questions.

Mr. McNatt:

You may step down.

I would like to call Mrs. Ozzie Faglie to the stand, please.

Whereupon, OZZIE FAGLIE, was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. McNatt:

Q. State your name, please.

A. Mrs. Ozzie Faglie.

Q. I will ask you if you brought certain invoices that I asked you to bring over the weekend.

A. I sure did. I have them here in my hand.

Q. I also ask you, Mrs. Faglie, to furnish correspondence that you received from your brother, that was mailed to you.

A. Yes, they were all mailed to me.

Q. The invoices of Clement A. Evans were issued to Mrs. Mary Anderson, your mother.

Mr. McNatt:

I am sure that is all right.

Mr. Wolff:

Invoices issued to Mrs. Mary Anderson. I would object to them at this time on the grounds that this is not the proper witness through which they could be introduced.

Mr. McNatt:

I think it will be established and connected up that Mrs. Anderson is eighty-five years old. Mrs. Faglie lives down in Wrens and she is really the custodian of the invoices, correspondence, and other things received by Mrs. Anderson. I think we can connect that up.

The Court:

You connect that up later.

Mr. McNatt:

I want to identify eight invoices from Clement A. Evans & Company.

(Petitioner's Exhibit No. 34 marked for identification.)

By Mr. McNatt:

Q. Petitioner's Exhibit for identification No. 34, being some of the documents that you just handed me, Mrs. Faglie, I wish you would explain to the Court where you received those documents, what they represented, and in whose name they transacted business.

A. They were a member of the Telephone & Telegraph Company, $2,250; tax, $2,200.

Q. I ask you if you received those invoices on behalf of your mother from Clement A. Evans & Company?

A. I sure did.

Q. I will ask you if your mother actually got this money?

A. She did.

Mr. McNatt:

I offer in evidence Petitioner's exhibit for identification No. 34, being the document just testified to.

Mr. Wolff:

I object to the document on the grounds that it does not appear to me that Mrs. Faglie is the one who can testify with respect to Mrs. Mary Anderson's papers received by Mrs. Mary Anderson.

Mr. McNatt:

Mrs. Anderson is eighty-five years old. She is almost incompetent. Mrs. Faglie has testified that these invoices were received by her on behalf of Mrs. Anderson, and she knows that of her own knowledge. Now when Mrs. Anderson gets on the stand we can connect it up.

The Court:

Are you going to put Mrs. Anderson on the stand?

Mr. McNatt:

The Government is.

Mr. Wolff:

We never said we would.

Mr. Cushman:

We did not think they would subpoena her—

Mr. McNatt:

That is not human, if they did not intend to do it.

Mr. Cushman:

There is the lady right there (indicating).

Mr. Wolff:

These documents should be put in through Mrs. Anderson.

Mr. McNatt:

Mrs. Faglie's testimony is that she received those through the mail—Mrs. Anderson is not able to get her own mail—on behalf of Mrs. Anderson.

The Court:

You were accustomed to handling your mother's affairs?

The Witness:

My brother and myself. Some of it went through him and some of it went through me, but we all agreed.

The Court:

They will be received in evidence.

(Petitioner's Exhibit No. 34 received in evidence.)

Mr. McNatt:

Petitioner's exhibit for identification, being four invoices from Clement A. Evans & Company addressed to Mrs. Ozzie Faglie.

(Petitioner's Exhibit No. 35 marked for identification.)

By Mr. McNatt:

Q. Petitioner's Exhibit for identification No. 35, Mrs. Faglie, is four invoices made out in your name. I ask you if you received the proceeds of those stocks?

A. I sure did.

Q. I ask you if you owned the stocks at the time they were issued?

A. I did.

Q. I ask you if you have ever permitted your brother to buy any stocks in your name?

A. Yes, sir, I permitted him to buy. I can't understand why—

Q. I ask you if you had ever permitted your brother to buy any of his stocks in your name?

A. No, I didn't. He used his money for his business, and he used my money for mine. We all had separate money. My money was mine, and my mother's money was hers, and his money was his. And he didn't use my money for his stocks, he just used it for his own stocks. And he didn't use it for mother's, he used it for his own stocks.

Q. I believe it is your testimony then that all stocks in your name were your stocks and you furnished the money to purchase them?

Mr. Wolff:

Objection, Your Honor, for a leading question, and motion to strike. I do not believe that was a proper summarization of her testimony.

The Court:

It is in evidence, and it will stand.

By Mr. McNatt:

Q. I hand you part of Petitioner's Exhibit No. 35, being Invoice No. 8927, and ask you if that was your stock?

A. It sure was.

Q. I ask you who furnished the money to buy that stock?

A. I furnished the money myself.

Q. I have three more similar invoices here, except one of them is for Johnson, Lane & Space. Would your testimony be the same thing on these three?

A. It sure would.

Mr. McNatt:

I submit in evidence Petitioner's exhibit for identification No. 35.

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 35 received in evidence.)

By Mr. McNatt:

Q. Speak just a little louder, if you will, when I ask you a question.

A. Yes, sir.

Q. Mrs. Faglie, I show you a series of letters received from your brother and ask you if you found these in your records?

A. I did.

Q. Will you explain in as few words as you can to the Court what these letters represent?

A. Well, it was a statement of mine and a statement of Mother's; a statement of mine, and a statement of my Mother's.

Mr. McNatt:

I submit in evidence letters dating back to 1935, being from Petitioner L. T. Anderson to his sister Mrs. Ozzie Faglie and running up through 1938. Also there is a deposit slip in here showing that—I did not develop this.

By Mr. McNatt:

Q. Will you please tell us what that deposit slip is, if you know?

A. He deposited some of my money that I had when it was left over from buying the stock.

Q. In other words, it is money that you gave him and he deposited to your account, is that correct?

A. He deposited it. He deposited this in my name. He deposited it for me, and it was my money that he had left over when he bought the stock. It was some money that was left over, and he deposited it in the bank in my name.

Mr. McNatt:

I submit in evidence the series of letters just mentioned.

Mr. Wolff:

No objection, Your Honor.

The Court:

It will be received.

(Petitioner's Exhibit No. 36 marked for identification and received in evidence.)

By Mr. McNatt:

Q. I ask you if you will tell the Court if you ever inherited any money from your father's estate, how big the estate was, and how much?

A. I inherited money and real estate and county warrants.

Q. How much?

A. About $14,000; somewhere about $14,000.

Q. And this is the money that you have used to invest in these stocks?

A. Some of it. I didn't use it all in that.

Q. But that is—

A. That is part of the money that he left me, that Papa left me, that I invested in these stocks.

Mr. McNatt:

Your witness, Mr. Wolff.

Cross Examination.

By Mr. Wolff:

Q. Mrs. Faglie, do you understand the nature of this proceeding which is now being brought before your brother, the nature of this proceeding today?

A. I am so nervous now, I don't know.

The Court:

What do you mean, in a general way?

By Mr. McNatt:

Q. In a general way.

A. That what they are suing him for?

Q. Yes, ma'am.

A. I understand they are suing him for income tax, and I understand that they want to—I understand that the—

Q. Mrs. Faglie, it is understandable that you want to do everything to help your brother that is entirely possible and to testify exactly to things that you know. It is understandable for you to be nervous, but I hope that you will bear with us and answer just a few questions. If you know the answer, you can tell us; if you don't know the answer, just say you don't know.

You are aware this is not a criminal prosecution, are you not?

A. Um-hum.

Q. Mr. Anderson is your brother?

A. Yes.

Q. How much money did you ever give Mr. Anderson, Mrs. Faglie?

A. I never did give him anything. Whenever, I don't know. He helped me look after and buy these securities. We took some of my Daddy's estate and I put it in his securities, but I didn't put any of his in with mine or Mother's, either.

Q. Do you recall how much cash you got from your father's estate?

A. I sure don't.

Q. Was it a sizable amount?

A. Well, we just—I don't remember. I got some cash and I got some real estate and I got some bonds.

Q. These bonds were the county warrants?

A. Yes, the county warrants. That is what I meant to say, I made a mistake. The county warrants, real estate, and cash money. But I don't recall how much there was of each one of them.

Q. Where did you keep your stocks, Mrs. Faglie?

A. I kept them in Mama's box, the securites in Mama's box in Augusta.

Q. The safety deposit box, was that the box?

A. Yes. And my husband had a little tin box with his papers, and we didn't think it was safe. It was a tin box with a lock to it. You just placed it in the bank. They didn't have the lock boxes in the account. I just kept it in Mother's box and sometimes I paid half of the rent and sometimes I would not.

Q. I don't know if I understand the answer to the question, Mrs. Faglie. How much money did you ever give your brother to invest for you or otherwise?

Mr. Cushman:

I think that question is indefinite and unreasonable. The man died in 1929. The evidence is clear and undisputed that investments were made over a long period of time. I think the witness obviously is unable to answer here as to the details of something that happened twenty-six years ago. The question is unreasonable.

The Court:

It is perfectly all right for the witness to say if she does not remember.

The Witness:

I don't remember how much money I got, and I don't remember just exactly everything that passed in that time.

By Mr. Wolff:

Q. Is this your signature, Mrs. Faglie?

The witness is now examining a document that is dated 3 June 1947 in the lower lefthand corner.

Is that your signature, Mrs. Faglie, in both places? There is one "Mrs. A. J. Faglie" and "Mrs. Ozzie Faglie." Are both of those yours?

A. I reckon it is, I don't know. I reckon it is. That was the first time an officer had ever been in my house and I was so excited I just don't remember all about it. It was just so exciting to be—it was the first time an officer had ever been in my home and I just didn't remember anything about it. I was more nervous than I am now.

Q. You signed that statement voluntarily, did you not?

A. No, they asked me to sign it. They asked me to sign it.

Mr. Wolff:

No further questions, Your Honor.

I would like to have marked for identification at this time the statement which has been signed by Mrs. Faglie as Respondent's Exhibit EE for identification.

(Respondent's Exhibit EE marked for identification.)

Mr. Wolff:

No further questions.

The Court:

Any further questions, Mr. McNatt?

Mr. McNatt:

No, no further questions.

The Court:

Thank you, Mrs. Faglie. That is all.

(Witness excused.)

Mr. McNatt:

Mr. Thomas Spillane, please. Will you take the stand.

Whereupon, THOMAS R. SPILLANE, was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk:

State your name and address, please.

The Witness:

Thomas R. Spillane; Savannah, Georgia.

Direct Examination.

By Mr. McNatt:

Q. In what business are you engaged?

A. I am a partner of the firm of O'Brien & Spillane, Certified Public Accountants.

Q. How long have you been in this business?

A. Since 1949. I have been in the accounting business since 1922.

Q. Are you a C.P.A.?

A. I am.

Q. Would you please tell the Court when you received your certificate?

A. Georgia, 1924; California, 1928; and Florida, 1931.

Q. Will you please state your positions before you went with Mr. O'Brien in the firm of O'Brien & Spillane. Start back at the first of your accounting business and briefly tell the Court what you did and what your duties were.

A. I was an Internal Revenue Agent from March 1922 to February 1925. I had my own firm in Lakeland, Florida, from 1925 until December 1929. I became a revenue agent in the Philadelphia Division in 1929. I became an internal revenue agent in charge of Florida on January 26, 1930. I was transferred back to the Atlanta Division in October 1933. And I was an Internal revenue agent in the Atlanta Division since 1933 until June of 1949.

Q. And at that time you were in your present position?

A. That is right.

Q. Mr. Spillane, there has been introduced into evidence Petitioner's Exhibit No. 14. I ask you to look at this exhibit and state whether or not you prepared it.

A. I worked on it with one of my staff men. I would say yes, I supervised and worked on it.

Q. It was prepared under your supervision and jointly with one of your men?

A. That is right.

Q. I ask you, Mr. Spillane, from the evidence in this case, what was your basis for putting on here "Security Deeds of Mother"?

A. By the very nature of the case, we endeavored to be very careful. The first staff man that worked on the case with me went blind. In his file was a list of certain accounts and loans, debts, with his key number on there meaning mother or daughter. After that boy went blind, another staff man and myself went through his papers. We went to Augusta and we rediscussed this particular phase again with Mr. Anderson. At that time he repeated his information as to those particular loans.

The third time, about a month later, I went over a complete list and asked Mr. Anderson who was the owner of these loans and we checked for the third time. When we found the statements that he had written to his mother commencing in 19—

Mr. Wolff:

Your Honor, I object to this testimony. I think the question should be more direct, who told who what and why, and so forth. I would move to strike all of the witness's testimony. It seems to be based on hearsay.

The Court:

What is this exhibit we are talking about?

Mr. McNatt:

Of the security deeds from the mother. This exhibit was prepared by Mr. Spillane and he is getting into the basis for putting it on this financial statement from the other exhibits in the case.

The Court:

Now this has been received in evidence. For what purpose has this been received in evidence?

Mr. McNatt:

These particular assets were included in Mr. Anderson's net worth and we are proceeding—

The Court:

This is simply identifying the things that were included in his net worth which you claim?

Mr. McNatt:

Which we claim are not Mr. Anderson's assets.

The Court:

This was not received for the purpose of proving that these belonged to someone else.

Mr. McNatt:

Yes, sir, we introduced it for that purpose.

The Court:

Was it received under stipulation with counsel for the Respondent?

Mr. McNatt:

No, sir. The exhibit was received merely to aid the Court when we started putting on the proof. Mr. Anderson has testified to some of these loans. The Respondent has introduced into evidence certain exhibits which we are now merely asking Mr. Spillane, in addition to the testimony of Mr. Anderson, the documentary evidence, that we are considering in the case.

The Court:

I can receive this evidence for purposes of saying how he prepared this, but not as proof of facts. It would be hearsay.

The Witness:

We are coming to that.

Mr. McNatt:

The proof of fact is in other exhibits in evidence.

The Court:
I cannot receive it as proof of the fact.

Mr. McNatt:
No, sir, that is not proof of the fact.

The Court:
Neither this nor what he is saying now. He cannot testify as to just what someone else told him except for purposes of how he prepared this document.

Mr. McNatt:
That is the reason I am submitting it. If you will bear with me for a minute—for instance, on Respondent's Exhibit I, part of these loans that are on there are included in a savings and loan account.

The Court:
Well, you intend to—is that in evidence now?

Mr. McNatt:
Yes, sir, that is in evidence now.

The Court:
I think that is merely a matter of calling attention to it on brief.

Mr. McNatt:
Yes, sir. Being that Mr. Spillane prepared the statement, it might help the Court some.

The Court:
Yes.

By Mr. McNatt:

Q. I ask you if you are familiar with the Respondent's Exhibit A, which is a computation of Mr. Anderson's net worth by the Respondent?

A. Yes, sir, I am.

Q. I ask you if you have reviewed that statement?

A. I have.

Q. I ask you if you have prepared from a review of that statement, assuming that the statement is correct insofar as the assets are listed thereon, a computation of the cash available from outside sources, assuming the correctness of this statement?

A. May I make a statement, Mr. McNatt?

Q. Yes, sir.

A. This statement here is prepared from Exhibit A together with the evidence that has been submitted during this trial, and that is a cash available statement as to the amount of cash that would have to be available had the taxpayer done what the Government said he did. Is that clear?

Q. In other words—

The Court:

When?

The Witness:

At the end of each year.

By Mr. McNatt:

Q. I ask you if you will, Mr. Spillane, to take this exhibit and explain to the Court the result of your findings from an analysis of the evidence.

A. This statement starts with the bank at the end of 12-31-40, which would be the opening cash as of 1-1-41. Now to that we added cash from all sources

that were available, as shown by the R.A.R. net worth statement, or by the evidence submitted here.

The Court:
You mean thus far submitted in the case?

The Witness:
We have been working current with the proceedings.

Mr. Wolff:
I wonder if he would enumerate there?

The Witness:
I would be glad to. Sale of Securities in 1941, $1,000. That was not on the Government's net worth statement but it was an asset that was sold in 1941, and this made available $1,000 cash. Interest on Direct Loans, $229.85. There was an increase in borrowed money of $2,722.25. By that, Your Honor, the increase at the bank on notes payable at the end of 1941 was greater than at the beginning of the year, and therefore that provided available funds.

The income returns as reported, $1,426.03. We added back depreciation which was deducted but which is not a cash transaction, but it had reduced the income of $1,795 and added back depreciation on out on the line $50. That now gave us total available cash in 1941 of $7,736.10. There were loans made of $2,300. There was land purchased in South Carolina of $1,700. There was land purchased in Georgia of $1,750. The balance in the bank at the end of the current year, $1,649.68, and the estimated living expenses the R.A.R. said $2,000. Excuse me, there is evidence in here of $1,000. We have put $1,000, so that it is $1,000 less

than what the Government said. But the total of those disbursements would amount to $8,399.68, or an expenditure of cash available of $663.68.

There was land purchased at a total of $425, but there was no money, based on these figures, to purchase it. Therefore, additional cash required would have been $1,088.58 for the year 1941. We closed up the year 1941 with $1,649.68 from the bank account, and therefore we opened 1942 with the similar amount. We collected on Jefferson County property $652.80. We collected on deeds, security debt, and real estate in the amount of $5,861.48. There was interest collected on debt $33.16. Interest collected on direct loans $211.37. There was increase in Notes Payable at the banks $1,859.68. Income for the income tax return was $2,390.90. The add back to depreciation of $2,026.30, and add back on the automobile $125. That gave us $14,910.27 as being the cash available.

Now there was disbursed land purchased in Georgia, $7,537.21. Bank balance at the end of the current year, $308.48. Estimated living expenses $1,000. And estimated commission paid on real estate sales, tentative figure, $2,500. That give us $9,360.69, which taken away from $14,900 cash available left $5,549.58. However, both the R.A.R. and the revenue taxpayers depreciation schedule showed that there was houses built and acquired at Sand Bar Ferry Road for $18,000. We could not pay $18,000 with only $5,500 available, and an additional cash acquirement of $12,450.42 would have been necessary for that particular year.

The Court:

Mr. Spillane, may I interrupt here. This is most unusual to me. Now he is representing the taxpayer and he is making computations which normally you

would expect to find on brief based upon the record. Now why does this have to be under oath? Why does he have to testify, or are you leading ultimately to some expert computation, or what is the purpose?

Mr. McNatt:

I was merely trying to bring out the fact that if the net worth statement over there is correct, then the certain funds had to come from somewhere.

The Court:

Well, isn't that something to argue on brief?

Mr. McNatt:

It could be argued on brief.

The Court:

I don't know that we need the testimony under oath of Mr. Spillane to point that out to the Court.

Mr. McNatt:

If the Court pleases, this is an expert analysis of the evidence in the case, and we think it would be helpful to the Court.

The Court:

Well, are you asking his opinion as an expert in some fashion?

Mr. McNatt:

Yes, sir.

Mr. Cushman:

If you take the hypothetical questions, say assume that so and so and so—

The Court:

I know that, and you are not treating him as an expert for that very reason. You are not assuming certain things. It is most unusual to ask an expert witness to testify as to facts in the case.

Mr. Cushman:

We think that—excuse me, sir. We think the tax returns, for example, which the income shows is so much. The tax returns are evidence. We say he built $18,000 worth of houses. That is in evidence on the back of the tax return and on the R.A.R. report. We say that bank account as of a certain year, the $1,800 in it, that is in evidence by stipulation. We say that he bought certain property in 1948, and that is also in evidence.

The Court:

Here is a witness you are putting on as an expert. In view of all the evidence in the case so far, what would be, you would ask the question, his opinion. I have never known of any rule that would permit that. It has to be done in a hypothetical manner and usually as to values only. You are having one of your own representatives of the taxpayer testify under oath as to something that normally you would expect to comment on in brief.

Mr. Cushman:

If it please the Court, is it not so, sir, that you can approach an expert witness from either one of two ways. You can either take a man who has no personal knowledge of the facts and then you use the hypothetical question. On the other hand, if the witness has a personal knowledge of the facts and knows

the evidence personally, then you can ask him his opinion with respect to that evidence, sir.

The Court:

I am not so sure about that. I know with regard to values an expert has to be given a hypothetical set of facts to answer on.

Mr. Cushman:

May I get some authority there, please, if you don't mind?

The Court:

My only interest here is trying to save time. I don't mind. The Government has not objected, except that I am in the interest of saving time. Why could it not be put in in the brief? What particular value is it to have Mr. Spillane under oath here to get it into this record? We have spoken several times about the cost of this record, and this certainly is lengthening the record.

Mr. Cushman:

Well, I simply thought it would be proper to have in the Court the opinion of an expert analysis.

The Court:

We can agree that he is an expert in his field, there is no question about that.

Mr. Cushman:

We thought it would be good to have in the record an expert analysis that the man could not have done this unless he had other funds.

The Court:
Well, proceed, unless the Government has some objection.

Mr. McNatt:
I am inclined to agree with the Court. We thought at the time it would be beneficial to the Court, but I do believe we can do it on brief as well as from this standpoint, probably better.
Come down, Mr. Spillane; unless you want to ask him some questions, Mr. Wolff. Do you?

Mr. Wolff:
No questions, Your Honor.

Mr. McNatt:
That concludes our case, if the Court please.

The Court:
Petitioner rests.

Mr. Wolff:
I would like to call as Respondent's first witness Mrs. Elizabeth Fincher.

Whereupon, ELIZABETH FINCHER, was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

The Clerk:
State your name and address.

The Witness:
Mrs. Elizabeth Fincher. Office address, 449 West P Street, Atlanta, Georgia.

Direct Examination.

By Mr. Wolff:

Q. Where are you employed?

A. I am employed as a clerk with the Director of Internal Revenue.

Q. How long have you been so employed?

A. Almost ten yars.

Q. Have you examined the records in the Collector's office, or Director's office in Atlanta, Georgia, to determine the filing of records of income tax returns for Mr. L. T. Anderson?

A. I have.

Q. Starting with what year?

A. Starting in 1913 and to 1954, inclusive.

Q. 1954?

A. 1954, inclusive.

Q. What do the records disclose with respect to the years 1913 to 1938?

A. There was no—

Mr. McNatt:

I object, Your Honor. This is not relevant. The years before the Court are 1941 to 1948.

Mr. Wolff:

There has certainly been evidence received in the case, Your Honor, with respect to affluences on the part of the Petitioner prior to 1940. This is to show, perhaps, where some of the affluence was or was not.

Mr. McNatt:

Some of the what?

Mr. Wolff:
Affluence, a-f-l-u-e-n-c-e.

The Court:
Aff.

Mr. Wolff:
I thought I said two f's.

The Court:
What do you say to that, Mr. Cushman?

Mr. Cushman:
I think, if Your Honor please, the record of tax return for a great number of years prior to the years in question is not competent evidence. It is too remote to the point of time without some further foundation being laid on the part of the Government that the tax returns should or should no have been filed. I submit for the Court's consideration that probably the proper way to get at this thing, we know what years. Ask, Did he file a tax return for 1941, and if you do have it? And if you do have it, produce it.

The Court:
I believe counsel is correct. That is one of the ungodly matters shaping up to be proved. the taxpayer's means prior to the years in question. I believe the Government should be allowed to put in any evidence it has bearing upon that subject, and I think the thing may have some bearing. However large or small, I would like to receive it for whatever it may be worth.

Mr. Cushman:
We will abide by Your Honor's rules.

By Mr. Wolff:
Q. Did I understand you to say the Director's Office in Atlanta?
A. Yes, I am in the Director's Office.
Q. What do the records in that office disclose with respect to the filing of an income tax return for the years 1913 to 1938 with respect to the Petitioner, L. T. Anderson?
A. There is no record--

Mr. Cushman:
We would like to object on the ground that no foundation was laid. The question is improper. I feel sure the Court will rule the same way, but we want the record to show our objection.

The Court:
Overruled. Exception noted.

The Witness:
Well, there was no records in the District of Georgia for any return being filed for the years prior to 1939.

By Mr. Wolff:
Q. Was the return filed in 1939 and 1940?
A. Yes, there were.
Q. What do your records disclose with respect to those returns?
A. In what way do you have reference?
Q. To 1939.

A. The non-taxable returns, is that what you have reference to?

Q. Yes, ma'am. Were returns filed for the years 1941 through 1946?

A. Yes, they were.

Q. What do your records disclose with respect to the filing of a return in 1947?

A. There is no record of any estimate or income tax return for 1947.

Q. Is there any evidence of an estimated tax return being filed for 1948?

A. I will have to check. I don't think there was. I will have to look in my records to see.

There are no records as to the 1948 return.

Q. With respect to either Mr. or Mrs. Anderson?

A. That is correct.

Q. That is, L. T. Anderson

A. L. T. Anderson, Route 4, Augusta, Georgia

Mr. Wolff:

No further questions, Your Honor, at this time.

Mr. McNatt:

No questions.

Mr. Cushman:

Just a minute. I think we are entitled, if Your Honor please, to let him go ahead if he has any more questions to ask the witness. "No more questions at this time," I am not sure I understand what that is.

The Court:

I think the law ordinarily requires you to finish with a witness. I think it might be proper, but—

Mr. Wolff:

I think perhaps unusual circumstances in this case, Your Honor.

The Court:

May arise, you mean?

Mr. Wolff:

Yes, which would require recalling her to the stand.

Mr. Cushman:

And we will reserve our right to cross examination to the end of the Government's case. Then we would like to reserve for purposes of cross examination.

The Court:

I think you should cross examine on the idea that I would not allow her to be recalled unless something unusual came up.

Mr. Cushman:

We have no cross examination, if Your Honor please.

The Court:

Very well.

Mr. Wolff:

I would like to call as the next witness, Mr. Hugh Bedingfield.

Whereupon, HUGH BEDINGFIELD, was called as a witness on behalf of the Respondent and, having first been duly sworn, testified as follows:

The Clerk:
State your name and address.

The Witness:
Hugh Bedingfield; 3023 Masonic Building, Augusta, Georgia.

Direct Examination.

By Mr. Wolff:

Q. Mr. Bedingfield, are you appearing here today in response to a Government subpoena regarding a motion to produce?

A. Yes, sir.

Q. Did you bring with you any records you might have with respect to work that you did for Mr. L. T. Anderson?

A. I did.

Q. What is your business, Mr. Bedingfield?

A. I am in the accounting business.

Q. Are you a certified public accountant?

A. No, sir, I am not.

Q. How long have you been engaged in the accounting practice?

A. Since 1937.

Q. How long, continuously since 1937?

A. Well, I was a Deputy Collector of Internal Revenue in December 1943.

Q. What did you do in 1943?

A. I went in business for myself in the Masonic Building in Augusta, Georgia; in the accounting business.

Q. Are you acquainted with the Petitioner in this case, L. T. Anderson?

A. I am.

Q. How long have you known him?

A. I would say since about the middle of 1947.

Q. Are you a registered public accountant in the State of Georgia?

A. Yes, sir, No. 28.

Q. Sometime after 1943 when you opened your office, were you ever employed by the Petitioner, L. T. Anderson?

A. Well, I was employed by Mr. Anderson. I don't remember when, but he came to the office and said Mr. Orr and Mr. Spence was working on him for the year 1944, I believe was the time, the year, that he specified as the time. But anyway, he talked to me about it at this time and I asked him for some records. He said he didn't have any records. I asked him for a copy of his income tax returns, and he said he didn't have a copy of it.

Q. When was this now, Mr. Bedingfield?

A. I think that was in 1947, sir. The biggest thing I remember with Mr. Anderson in 1947 was the fact that he talked to me three or four times concerning this case. His conversation with me all relates to the fact tha Mr. Orr and Mr. Spence had picked up his records and had gone out to Wrens and mistreated his mother and his sister and made them sign affidavits or something that was not true.

Q. Mr. Bedingfield, did you prepare the 1948 return of Mr. Anderson?

A. Mr. McCutcheon in my office did, sir; yes, sir.

Q. And was this return prepared from the books and records of Mr. Anderson?

A. Well if there is any books, I don't know anything about them. He might have had a time book or small books, but most of the information was submitted by Mr. Anderson on typed sheets.

Q. Did you prepare a 1947 return for Mr. Anderson?

A. I did not.

Q. Were you employed to do so?

A. No, sir, I was not. I think I have a letter here from Mr. Anderson stating he sent some papers in to file a 1947 return. He states in there that I had changed girls in the meantime, but if he left anything to file a 1947 return, I do not know anything about it. His excuse to that was Mr. Orr and Mr. Spence had his records and he could not file a 1947 return. I have a letter to that effect.

Q. Were you present in the Courtroom when Mr. Anderson testified?

A. Part of the time, yes, sir.

Q. What books did Mr. Anderson ever give to you of his?

A. Mr. Anderson never give me any books personally.

Q. Did he ever leave any at your office, to your knowledge?

A. Not to my knowledge. He could have left a small book, a time book, or papers with Mr. McCutcheon or Mr. Orr. They worked out his 1948 and 1949 income tax returns.

Q. Did he ever leave any books with respect to the 1947 in your office?

A. Not that I know of, but I don't know anything about it. He could have. As I stated before, he always told us that Mr. Orr and Mr, Spence had his 1947 records and it was not possible to file a return.

Q. Where did you prepare his 1948 return?

A. Where?

Q. Yes, sir.

A. Well, it was prepared in the office over a period of five or six months.

Q. Where did you get the information that you put on that return?

A. It was brought in by Mr. Anderson.

Q. On summary sheets or otherwise?

A. I think I have a copy of part of it here now. All I see is what was brought in in slips of paper typed by Mr. Anderson.

Q. Mr. Bedingfield, you mentioned Mr. Spence being involved. Are you sure of that?

A. How is that?

Q. You mentioned Mr. Spence being involved in the case. Are you sure that Mr. Anderson mentioned him to you?

A. Oh, yes. I don't know—this rocked along if I remember correctly. Mr. Orr picked up Mr. Anderson's records.

Q. How do you know this?

A. What?

Q. How do you know this?

A. I don't know. That is only hearsay. Both of them told me they did pick them up in June or July of 1948.

Q. Did you ever prepare a declaration of estimated tax for 1948 on behalf of Mr. Anderson?

A. I did not.

Q. Were you employed to do so?

A. Not that I know of.

Q. Did you ever advise Mr. Anderson not to file an estimated tax return?

A. No, sir, I did not.

Q. Did you ever advise him not to file a 1947 income tax return?

A. No, sir, I did not. We have had enough difficulty trying to get people to file estimates without advising them not to.

Q. Did Mr. Anderson furnish your office with any information with respect to 1947?

A. He did not.

Q. If he had, would your files indicate that he did?

A. I would think so.

Mr. Cushman:

Is the thing not leading far enough? I am trying to get to the meat of the thing. Let him produce his records and we will see what he has.

By Mr. Wolff:

Q. Do you have the records of your office here today?

A. Yes, sir. What I have, I have here.

Q. Is there anything in there with respect to the year 1947?

A. Nothing except a depreciation schedule that I have been able to find.

Q. What was for 1947?

A. Yes, sir. Here is a depreciation schedule worked out for 1947, connected with the 1948 income tax return.

Q. You have no file with respect to 1947?

A. I do not. I do have a letter with some information for 1947 written in 1949. At the bottom of that letter I see that Mr. Anderson states that the Government boys still had his income tax information. He sent me that information which was impossible to file any income tax return with at that time.

Q. You don't know whether it is so or not, do you?

A. What is that?

Q. This information in this letter.

A. I do not. He gave me no income. The only thing he gave me was expense. I think that is correct. That is in September 1949. That was a little bit late.

Q. Is this the only information that you know, only with respect to the 1947 year?

A. As far as I know, sir. I am out of town about two to three days a week during the filing period. It could be possible that Mr. Anderson left something in my office, but I personally don't know anything about it and none of my employees seem to know anything about it.

Mr. Wolff:

No further questions, Your Honor.

Cross Examination.

By Mr. Cushman:

Q. Mr. Bedingfield, you know what the Government has Mr. Anderson charged with doing with reference to the year 1947?

A. Not exactly. I know they have him charged with failure to file a return.

Q. Do you know the Government is charging him with failure to file a return for the purpose of defrauding the Government?

A. I don't know.

Q. Does that information surprise you?

A. What do you mean?

Q. Just what I said. Does the information surprise you?

A. As I stated before, I don't know what he has been charged with, but I know he didn't file a 1947 income tax return, as far as I know.

Q. Well, let me ask you this: Does it surprise you that the Government is charging him with failure to do that with the intention to defraud the Government of taxes?

A. No, it does not surprise me.

Q. Does not surprise you at all?

A. No, sir.

Q. In other words, Mr. Anderson is just not worth much?

A. No, sir, I would not say that. I didn't say that. I say that Mr. Anderson was sick. There are letters in my file where he was going to the doctors—this, that, and the other—and I think he was upset over the fact that the Government boys had him worried. If I remember correctly, we asked him to get us the information on the file of the 1947 tax return. He finally did give it to me in a letter here in 1949.

Q. When you say "We knew he was upset," who are you referring to by "we"?

A. Well, everybody in the office, Mr. Cushman, knew it.

Mr. Cushman:

Do you have something to say, Mr. Wolff?

Mr. Wolff:

Yes. Evidently Mr. Cushman is injecting into this examination, partly going into the character of Mr. Anderson. He is also going to various other phases of the case that were not covered on direct examination. I think it is clearly improper, some of the ques-

tions that he is going into. I would appreicate it if he would confne his questons to the direct examination.

The Court:
We must confine it to the direct examination. I didn't notice what he was after, whether it went beyond the direct examination or not.

Mr. Cushman:
If Your Honor please, I would like to get on with the cross examination. Before replying to Mr. Wolff, I would like to ask that the witness be excused from the Courtroom.

The Court:
Any objection?

Mr. Wolff:
Like to ask what? I didn't understand.

The Court:
Counsel for Petitioner would like to excuse the witness from the room for the purpose of making a statement to the Court.

Mr. Cushman:
With reference to the scope of cross examination and with particular reference to Mr Wolff's objection.

Mr. Wolff:
I have no objection

Mr. Cushman:

How about a recess? We can talk to you in chambers.

The Court:

We will take a recess. Both of you come to chambers, if you would.

(Whereupon, a short recess was taken.)

The Court:

Proceed with the cross examination, Mr. Cushman.

By Mr. Cushman:

Q. Now I believe you testified that you first had contacted Mr. Anderson sometime in 1947?

A. That is right, sir.

Q. Approximatelf when in 1947?

A. I think it was July, sir.

Q. You think it was July; it could not have been June?

A. It could have been. It has been a long time.

Q. Either June or July?

A. Yes, sir.

Q. Either late spring or early summer?

A. Either June or July.

Q. Will you please relate to the Court the circumstances under which you had the first conversation with Mr. Anderson?

A. How is that?

Q. Will you please relate to the Court the circumstances under which you had your first conversation with Mr. Anderson?

A. Well, he came to the office and talked to me about the income tax returns, as I said, for 1944.

Q. All right. What else took place in that initial interview?

A. Nothing that I remember, sir.

Q. Did you give him any advice?

A. No, sir, I didn't. I don't remember giving him any advice. I said when Mr. Orr got through with the case we could go into it and see what we could do with it.

The Court:

For what year?

The Witness:

He was talking about 1944 at that time. Of course, it developed all these years in the meantime.

By Mr. Cushman:

Q. You told him that when Mr. Orr got through with the case you would go through it and see what could be done for him?

A. That is right.

Q. Did you or did you not undertake to represent him?

A. Well, I never did because Mr. Anderson talked to me on the street more than anywhere else. He came to the office a few times, but he talked to me on the street more than anywhere, about everything in the world.

Q. You will admit, will you not, that you had a great many conversations with Mr. Anderson with reference to his liability for 1944, 1945, 1946, 1947, 1948, and 1949?

A. At least five or six, I would say, and 1950.

Q. And did you have any more conversations with Mr. Anderson in 1947 with reference to his 1944 tax returns?

A. I would not remember that, sir.

Q. Well exactly, Mr. Bedingfield, in order to get it clear, what is your understanding of what you were supposed to do with reference to 1944?

A. Well, I never did find out.

Q. It is your position, then, Mr. Bedingfield, that Mr. Anderson came to your office and told you that agents of the Internal Revenue Service were investigating him with reference to the year 1944 and that he came to your office for the purpose of consulting with you professionally?

A. That is right.

Q. And you never found out what you were supposed to do?

A. I never had any records or anything to go by to do anything for Mr. Anderson.

Q. Did you ever have any conversation with Mr. Orr?

A. Mr. Orr came to my office sometime in 1947 or 1948, I don't remember which, and I think Mr. Anderson was there at the time, if I remember correctly.

Q. What instructions, if any, did you give to Mr. Anderson during that initial interview in 1947?

A. I asked him to get me some records to try to see what we could do with his 1944 returns.

Q. And it is a fact, is it not, that you understood that you were employed to represent Mr. Anderson with reference to his 1944 returns?

A. Yes, sir.

Q. All right, sir. Now after the initial interview, when was the next time that you had a conversation with Mr. Anderson or Mr. Orr?

A. I don't think I had another one with Mr. Orr except sometime in 1949. If I ever had another with

Mr. Orr, I don't remember. I talked to Mr. Orr maybe twice concerning the case. I don't remember exactly when it was, however.

Q. Where did these conversations take place?

A. With Mr. Orr?

Q. Yes, sir.

A. In my office.

Q. Did Mr. Orr come to your office voluntarily or did you invite him?

A. I don't remember that. He was always welcome to come, or any other Internal Revenue Agent could come any time.

Q. As a matter of fact, you had been friends for a great number of years?

A. No, sir.

Q. How long had you been friends?

A. I don't know if we had ever been special friends. I had known Mr. Orr probably at that time maybe two years, two and a half years.

Q. I believe that you stated you were Deputy Collector. Did you know Mr. Orr during the time you were in the Internal Revenue Service?

A. No, sir.

Q. Absolutely not?

A. I say a very short period, probably two months or something like that.

Q. But you did know him?

A. Yes, sir.

Q. All right, sir. Now I would like to repeat my question. When you had your conversations with Mr. Orr, did he come to your office voluntarily or did you invite him?

A. Well, I don't remember that

Q. You don't remember?

A. No, sir.

Q. You could have invited him?

A. I would not say I did. I very seldom do invite an Internal Revenue Agent into my office. I don't think I would have done that.

Q. In other words, they are welcome but you are not going to encourage it?

A. No, sir. I don't go out looking or ask them there.

Q. It would not have been your normal office procedure to invite him for a social visit?

A. No, sir.

Q. And if you had invited him to the office, it would have been for the purpose of discussing Mr. Anderson's case, would it not?

A. Either that or some other case. We have a lot of cases with Mr. Orr.

Q. We are talking about the conversations that you had with Mr. Orr with reference to Mr. Anderson's affairs, are we not?

A. Yes, sir.

Q. All right, sir. You don't know whether you invited him there or whether he came voluntarily?

A. I would say he came voluntarily.

Q. Would you also state when he came there, he came for the purpose of discussing the Anderson case?

A. I would think so, yes.

Q. And did you discuss the case with him?

A. Very slight, if any. I don't think I discussed anything with him in 1947, sir.

Q. Well, what did you do in 1948?

A. Nothing.

Q. And what did you do in 1949?

A. As far as Mr. Orr is concerned?

Q. We are talking about conversations with Mr. Orr about Mr. Anderson.

A. Nothing in 1949.

Q. And in 1950?

A. In 1950, my son and Mr. McCutcheon had a conference with Mr. Orr and Mr. Spence I think in the office one time, and then they went to the post office to meet Mr. Anderson, Mr. Peoples, and Mr. Burnside.

Q. It is a fact, is it not, that neither you nor any member of your firm would have had any conversation at all with Mr. Orr unless you were representing Mr. Anderson?

A. Well, we had conversations with Mr. Orr on other cases.

Q. Now, Mr. Bedingfield, let us get back to Mr. Anderson's conversation. It is a fact, is it not, that neither you nor any member of your firm would have had any conversations with Mr. Orr if you had not been representing Mr. Anderson?

A. Not about Mr. Anderson.

Mr. Wolff:

I think he has argued enough with the witness. He said he represented other clients with Mr. Orr, and I don't see how direct he could be in it.

Mr. Cushman:

I have asked the witness to confine himself to Mr. Anderson's affairs, and I think I had a right to get an answer.

The Court:

You are talking about this time when Mr. Orr and Mr. Anderson were both there, I take it?

Mr. Cushman:

No, sir, I was not talking about that. I was talking about conversations between this witness and Mr. Orr with reference to Mr. Anderson's affairs. That is the subject I am trying to explain.

The Court:

The witness has said on some occasions Mr. Orr might have been there on some other cases.

By Mr. Cushman:

Q. With specific reference and limited entirely to conversations between yourself and Mr. Orr with reference to Mr. Anderson's affairs, it is a fact, is it not, that you would have had no conversation with Mr. Orr if you were not representing Mr. Anderson?

A. The only conversation I had with Mr. Orr was when Mr. Anderson was there.

Q. Mr. Anderson was present?

A. Yes, sir.

Q. And in what capacity were you discussing the matter, as his accountant or as his advisor, or as an innocent bystander?

A. Mr. Cushman, I was representing Mr. Anderson at the time.

Q. All right, sir. At the time that you speak of, what years, if any, were under discussion?

A. 1944.

Q. You never did discuss 1945 or 1946?

A. We did in 1950, but not in 1947.

Q. All right. It is a fact, is it not, that as Mr. Anderson's accountant you discussed frequently and at great length his tax affairs from 1944 through 1947 with Mr. Orr?

A. No, sir, I did not.

Q. Well, tell us what you did do.

A. Well, I don't remember doing anything, sir.

Q. That seems to be the issue. Mr. Bedingfield, with reference to Mr. Anderson's affairs and your conversations with Mr. Orr, is it your testimony that you did nothing, sir?

A. In 1947 the only thing I did was, as I said, I had a conversation with Mr. Anderson maybe once or twice and Mr. Orr was present one time, I know. I don't know if he was present any other time or not, but in 1950 I talked with Mr. Orr and Mr. Spence maybe once or twice concerning the whole affair. Mr. Anderson hired Mr. Peoples or Mr. Burnside as his attorneys. In the meantime he had hired Mr. Congdon. And he hired Mr. Peoples and Mr. Burnside. Mr. R. B. McCutcheon, who is a certified public accountant from my office, went to the post office with me and Mr. F. W. Bedingfield for a conference.

Q. The fact remains that in spite of that, a number of lawyers from your firm was always represented at these conferences, is that not true?

A. Up until that time, yes, sir.

Q. All right, sir. Now you have stated that Mr. Anderson came to your office in June or July of 1947 with reference to his 1944 returns. Do I understand you to state that he gave you absolutely no records at that time?

A. I did, sir.

Q. He never gave you any records?

A. Except letters, pieces of paper that I have here. If he ever left a book in my office or ever brought one there, I never saw it.

Q. Well, are you stating that he did not do it or that you never saw it?

A. Well, I never saw it. I could not swear he did not bring one because I was not there all the time. I was out at least three days out of the week.

Q. What efforts, if any, did you make to find out whether he did or not?

A. I asked everybody connected with the firm if he did. Mr. Anderson always claimed that Mr. Orr had his records.

Q. Excuse me, sir. Let me ask you this: You say you asked everybody connected if he did. Now when did you ask these questions?

A. About 1949 when he claimed he did.

Q. Do you mean that Mr. Anderson gave you power of attorney in 1947?

A. No, sir, I do not.

Q. What use, if any, did you make of that power of attorney?

A. None.

Q. And you were—

A. The power of attorney was never filled out.

Q. But it was signed.

A. I think there was one signed, sir, but I don't think it was 1947. I think it was 1950. Could have been in 1947.

Q. Is it not a fact that Mr. Anderson signed a general power of attorney in your office with reference to this tax matter and handed it to you in accordance with the usual practice for you to insert the years that were necessary?

A. I would not say that he did or did not. I don't remember.

Q. You do know that he signed a power of attorney?

A. No, sir, I don't know that I did. But he could have, and maybe me not know. Or I should have

asked him to sign one myself and not read this far. That has been eight years ago. But I say this: We had no occasion to use a power of attorney at that time at all.

Q. But you certainly did get one from him, didn't you?

A. If we were going to go into the case, yes, sir.

Q. And it is a fact that you got a blank power of attorney, isn't it?

A. I don't know.

Q. Well, you stated a minute ago that "I did get it."

A. I didn't state I did get it, I stated we could have. I didn't say we did.

Q. Mr. Bedingfield, I would like, if you would, please, to explain for my personal enlightment, exactly what you conceived of your duties to be, sir, with reference to Mr. Anderson.

A. I thought at the time we were going to represent Mr. Anderson, try to get some financial statements and net worth statements from him. But it never did develop that we were to do that.

Q. Now it has been brought out here in testimony that you never advised Mr. Anderson not to file a declaration of estimated tax, is that true?

A. Yes, sir.

Q. And you never advised him not to file a 1947 return, did you?

A. I never advised him not to file any returns.

Q. What advice did you give him with reference to his 1947 return?

A. I never gave him any advice concerning his 1947 return because he kept telling me that he did not have any information to file a 1947 return with.

Q. What contacts or conversation did you have, Mr. Bedingfield, with representatives of the Bureau of Internal Revenue with respect to his 1947 return?

A. None whatever.

Q. Then it is your testimony, Mr. Bedingfield, that you were hired to represent a man, that you knew that he had not filed a 1947 return, and that you had no conversations with him about it or with any agent in the Bureau?

A. I didn't have any conversation with him about it. I had no conversation with any agent in the Bureau, but I did have a conversation with Mr. Anderson about it. He kept promising to get information and said Mr. Orr had his records. Here it is right here in writing to that effect.

Q. All right, sir. What efforts did you make toward getting an extension of time within which to file?

A. I don't know. I could not answer that, Mr. Cushman.

Q. It is true, is it not, that you made no efforts to get an extension of time within which to file?

A. I would not say, sir.

Q. Do you have anything in your records indicating where you wrote one line to the Bureau asking them for an extension of time within which to file an extension for the 1947 return?

A. I do not.

Q. And is it not a customary practice when a man comes to have a tax return filed and he does not have information or for any reason returns cannot be filed, to request an extension?

A. If they ask me to, I do.

Q. What are your duties as their agent, sir, in connection with those matters?

A. Well, Mr. Anderson never approached me on a 1947 return at all.

Q. You knew, did you not, sir?

A. I knew he had not filed one.

Q. And he told you, by your own testimony, that he did not have the records to do it?

A. That is right.

Q. What did you do to protect your clients?

A. I don't know whether we asked for an extension or not, sir.

Q. My question is, what did you do, sir, to protect your client?

A. I didn't do anything unless they asked for an extension.

Q. Did you or did you not?

A. I did not know. I do not know that.

Q. If you had asked, would it appear in your records?

A. It should, yes, sir.

Q. Will you examine your records and see if such a document is there?

A. It is not in this file here.

Q. And it is not in your office, is it?

A. I would not know about that.

Q. How many times have you requested an extension of time to file a return?

A. How many times?

Q. Yes, sir.

A. Oh, I say we request one hundred fifty to one hundred seventy-five a year.

Q. And did you request one hundred fifty to one hundred seventy-five for the year 1947 and the spring of 1948?

A. I would not know how many, but we requested something over one hundred, I am sure.

Q. But you did not request one for Mr. Anderson?

A. I don't know; no, sir.

Q. And you had a power of attorney in your files from him?

A. Well, I don't know if I had a power of attorney, sir.

Q. If one had been signed, Mr. Bedingfield, you would still have it in your files, would you not?

A. What is that?

Q. A power of attorney in blank.

A. Well, we looked for it but could not find it. Mr. McNatt and Mr. Spillane asked for that just three or four months ago when they were in Augusta, and we looked everywhere to try to find whether we had one or not and could not find it.

Q. You certainly would not ever remove it from your files?

A. I would not think so.

Q. And you do have in your files information brought around by Mr. Anderson over a period of several years?

A. I have some information starting in 1949.

Q. Mr. Bedingfield, I hand you a piece of paper with certain typewriting, printing, and writing in ink thereon, dated December 6, 1950, and bearing Mr. O. T. Bedingfield, letterhead of the firm of Bedingfield, McCutcheon & Bedingfield, and ask you if you recognize that document, sir.

A. Yes, sir.

Q. Did that document originate in your office?

A. Yes, sir; I signed it.

Q. That is your signature on it?

A. Yes, sir.

Q. Do you have the copy of this letter in your file?

A. I have one in Augusta, not here.

Q. It is a fact, is it not, that in this letter you admit that Mr. Anderson filed a power of attorney for you?

A. As I told you before, I told you he signed one in blank but it was never used, and I think it was returned to Mr. Anderson.

Q. Well, now, let's see. When did you start thinking that, Mr. Bedingfield?

A. Sir?

Q. When did you start thinking that you had returned it to Mr. Anderson?

A. Well, sometime about that time. I don't remember that, sir.

Q. Well, I believe you previously testified that Mr. McNatt and Mr. Spillane were in your office and you hunted high and low and you could not find it.

A. Copy of the power of attorney?

Q. Yes, sir.

A. We did.

Q. And there was nothing in the files about a power of attorney at all?

A. Nothing that I could find.

Q. Nothing, anything?

A. Not nothing about the power of attorney.

Q. At the time Mr. McNatt and Mr. Spillane were with you, did you find a copy of this letter wherein you stated that Mr. Anderson had signed a power of attorney and you never used it?

A. I think they had the letter at the time.

Q. I am satisfied that you knew it, but did you show them the copy in your file?

A. No, sir. They did not ask for a copy of that. I don't know if we had a copy of it or not.

Q. It is a fact, is it not, that when Mr. McNatt and Mr. Spillane came to your office some three or four months ago that you made an extensive search of your files for the purpose of finding this letter?

A. Which letter?

Q. The one right here, sir.

A. I don't know. They asked for a power of attorney.

Q. And you made an extensive search of your files?

A. The girl in the office did, yes, sir.

Q. And you could not find neither the copy nor the original?

A. No, sir, not of the power of attorney.

Q. And did you find anything in your files by way of correspondence or otherwise with reference to the power of attorney which had been given to you by Mr. Anderson?

A. No, sir.

Q. Nothing whatsoever?

A. Not that I could find.

Q. And you looked for it?

A. Mrs. Pierce did.

Q. Well, are you satisfied that she made a good, thorough search?

A. Yes, sir.

Q. But there is no question in your mind that you did have a power of attorney?

A. Well, I don't state definitely then that I had one.

Q. All right.

Mr. Wolff:

If he is going to put the letter in evidence, let it be received in evidence if he is going to keep referring to it. Question him about the letter. I think it speaks for itself more or less. Put it in for whatever it might be worth. If it says something, it either says or does not say there was a power of attorney issued.

The Court:
The Court is in the dark about what the letter says.

Mr. Cushman:
If my friend has no objection, I will now offer the letter in evidence.

The Court:
It will be received.

(Petitioner's Exhibit No. 37 marked for identification and received in evidence.)

By Mr. Cushman:
Q. Now, Mr. Bedingfield, it is in testimony here that the agents of the Bureau went with the Petitioner to examine lock boxes, or a lock box, bank accounts, and to the post office. It is a fact, is it not, that on most of these occasions a representative of your office went along with the Petitioner and the agents from the Bureau?
A. Yes, sir.
Q. That was the usual practice?
A. Yes, sir.
Q. And as a matter of fact, Mr. Bedingfield, it is true, is it not, that you could not have dealt with the agents of the Bureau and Mr. Anderson if you had not had a power of attorney?
A. Would never have dealt with Mr. Anderson's agents at all.
Q. I know that, sir. But I am saying it is a fact that you would not have dealt with the agents unless you had a power of attorney.
A. Yes, sir. That is true, sir.

Q. All right. Now you have testified here that Mr. Anderson on numerous occasions stated that Mr. Orr and Mr. Spence had his books. Do you know how they got his books?

A. No, sir, only what he said. He said they went down to his house and picked them up.

Q. Do you deny that Mr. Anderson brought his books to your office and either you or some representative of your office took the books to Mr. Orr?

A. Yes, sir.

Q. You deny that?

A. Yes, sir. I know I didn't.

Q. Are you denying that either your son or your partner, your other partner, took the books to Mr. Orr?

A. I could not swear to that, but as far as I know I have never seen any books. And I know Orr didn't pick up anything from me.

Q. But you don't know whether he got them from some representative in your office?

A. I am quite sure he did not, but I could not swear to that particular question, sir.

Q. All right, sir. Now I believe that Mr. Anderson said to you in 1950 that the Government had had his books for some thirty-two or thirty-three months.

A. I don't remember how long, but an awful long period.

Q. What efforts, if any, did you make to help your client to get the books back from the Government?

A. I don't remember. I asked Mr. Orr about when we could get the records one time. Now when that was, I don't know.

Q. And what did Mr. Orr have to say about that, sir?

A. I think Mr. Orr said at that time he had returned the records to Mr. Anderson.

Q. And where and under what circumstances did this conversation with Mr. Orr take place?

A. I think it was in Mr. Anderson's presence in my office. If I remember correctly, Spence and Orr were there. Anderson told them, told all of us, that they still had his records.

Q. And Mr. Orr made what statement, sir?

A. I don't know what Mr. Orr stated at the time, sir.

Q. Well, now, you just testified to the best of your recollection Mr. Orr said that he had returned the books. Now which way is it, Mr. Bodingfield? Did Orr say he had his books, did Orr not say anything, or did Orr say "I gave Anderson's books back"?

A. As I say, I think Mr. Orr made the statement that he at that time—that is, in 1950—that he had returned Mr. Anderson's books or his records; when I don't know.

Q. And it is also your testimony that prior to that conversation in 1950 you had on numerous occasions discussed the matter of the books with Mr. Orr and he told you the Government had them?

A. Yes, sir.

Q. Now I will ask you, What efforts did you make, if any, to get the Petitioner's books back from the Government?

A. I don't remember. I don't remember that, sir.

Q. It is a fact, is it not, that you made no efforts?

A. I would not say; I don't remember.

Q. It is a fact, is it not, that if you had written any letter to this agent, they would be in your files?

A. Should be.

Q. And it is a fact, is it not, that if you had made any effort to obtain a reasonable extension of time for Mr. Anderson with reference to the 1947 return, it would have been in your records?

A. Mr. Anderson didn't tell me anything about a 1947 return until 1949 that I remember. I never filed a return for Mr. Anderson. He had always gone to the post office and filed a return. I never filed a return. He talked to me about one year, and he wanted us to do the accounting work. He never mentioned any income tax returns to us at all.

Q. Did you have a conversation with Mr. Anderson on several occasions in which he told you that he could not, in which you say he told you that he did not file a 1947 return because the Government had his books? Is that right?

A. That is away back in 1949, sir.

Q. And it is your position, sir, that when a man walked into your office in June of 1947 telling you that he was under investigation by the Bureau, and later on tells you that he does know of the tax, that you owe him an obligation by way of extension of time or any correspondence in his behalf?

A. He never asked me about the 1947 return, sir.

Q. Let me ask you this: When a client comes into your office, do you advise them or do they advise you?

A. Well, we usually advise them if they ask for it, sir.

Q. Now it is in the record here, sir, that on several of those years which are normally barred by the Statute of Limitations, Mr. Anderson executed waivers of limitation. Are you familiar with that fact?

A. No, sir, I am not.

Q. Do you deny, sir, on numerous—at least several occasions—Mr. Anderson executed waivers extending the Statute in your office by your advice?

A. I would not say that. If he asked for them, I probably advised him to sign them, sir.

Q. The truth is, you did advise him to sign them, didn't you?

A. If it was asked for. If he asked me, I would have. I usually do that with all of them.

Q. And you undertook to advise Mr. Anderson with reference to his signing the waivers. Let's see. What other advice did you give Mr. Anderson at that time?

A. I don't remember giving Mr. Anderson any advice. You know Mr. Anderson: he talks so much you cannot give any advice. He does all the talking.

Q. But you didn't resign from the case, did you, sir?

A. What?

Q. You did not resign from the case, did you, sir?

A. Well, as far as I know, we never had a case.

Q. Did you ever on any occasion tell Anderson, "I am through with you. I could get no satisfaction out of you and I cannot represent you properly. Therefore leave my office"?

A. No, sir.

Q. All right. Now will you please relate the substance of the conversation which you had in 1950 with Anderson and Orr with reference to his general tax liability?

A. I did not have any conversation with him concerning the general tax liability.

Q. What conversation, if any, did you have with them in 1950 with reference to the tax liability of Mr. Anderson for 1944 or 1945 or 1946 or 1947?

A. I don't remember having any conversation with them at all, myself, personally.

Q. You are satisfied, are you not, that Mr. Anderson came to your office in company with the agents of the Bureau during 1950?

A. I think Mr. McCutcheon and W. H. Adams and Mr. Burnside were the agents in the post office, sir. But as far as coming to my office, I don't remember anything about it.

Q. A few moments ago you testified that Anderson and Orr had a conversation with you in your office. When did that take place?

A. Well, I think on two occasions. I had one in 1947 and probably one in 1950, 1949 or 1950. I don't remember.

Q. What was the substance of those conversations there in your office?

A. I would not know that.

Q. You were present?

A. Parttime, yes, sir.

Q. Now you did prepare the 1948 tax return for Mr. Anderson did you not?

A. Prepared in my office, yes, sir.

Q. I hand you Respondent's Exhibit AA and ask you if that is the tax return that you prepared, sir.

A. Yes, sir.

Mr. McNatt:

When a witness refers to something on the stand, opposing counsel is entitled to see the document. I am inspecting it and Mr. Wolff is trying to take it.

The Court:

What is it?

Mr. McNatt:

The letters and so forth he has been testifying from.

Mr. Wolff:

I didn't realize he had testified from any records at this point, Your Honor. He testified from a letter

which he received from Anderson, and I don't see the letter in that group he has there because I have it over at my table. I have no objection. I don't think there is anything in there.

The Witness:

A letter to his Congressman there or something to that effect.

The Court:

Counsel for Respondent says he has no objection. You did not subpoena this and the witness has not testified from it, but if Government counsel has no objection, I have none.

Mr. Wolff:

I have no objection.

Mr. Cushman:

The Court does not care if I go ahead with my work, do you?

The Court:

No.

By Mr. Cushman:

Q. Now directing your attention there to Respondent's Exhibit AA in the 1948 tax return of the Petitioner, you did prepare that, did you not?

A. Yes, sir, in my office.

Q. Sir?

A. Yes, sir, in my office.

Q. I would assume that the red stamp on the lower lefthand corner was made either by you or some employee in your office.

A. That is right.

Q. And I assume that was put there for the purpose of identifying who done the work?

A. That is right.

Q. Did you put on there, sir, the customary and official figures supplied by the taxpayer?

A. No, sir, we did not.

Q. All right, sir. Now would you please examine the supporting papers there, sir, at your leisure. I would like to question you about them. Let me know when you are finished.

A. All right, sir.

Q. You looked them over, sir?

A. Yes, sir.

Q. Now will you state whether you or Mr. Orr in preparing that tax return—it was your intention to use the installment method of reporting income on the sale of property?

A. Yes, sir.

Q. Did you reflect any capital gains in that year, sir?

A. It shows profit here for 1948, yes.

Q. And from what source did you gain that information?

A. From depreciation schedules and other information submitted by Mr. Anderson.

Q. All right, sir. Now let us see how you ferretted out this information. Tell us exactly where you got it from and how you got it.

A. It was supplied by Mr. Anderson.

Q. Well, how did Mr. Anderson bring it to you? Did he have it in a big box and put it on your desk, or did he sort it out, exactly how was it handled?

A. It was brought in the form of, written out on sheets. He had given the cost of houses, dates bought

and all that. It was not taken from books. It was written out by Mr. Anderson.

Q. Mr. Anderson, as I understand, brought memoranda to your office from which you prepared his 1948 return, sir?

A. That is right.

Q. What instructions did you give Mr. Anderson with reference to what memoranda to bring to your office?

A. The cost of the houses, all expenses, and all the income.

Q. Well, what else did you tell him now?

A. That is all I remember, sir.

Q. And did you tell him from where he could get that information?

A. How is that?

Q. Did you tell him where he could get that information?

A. Not that I remember.

Q. And you prepared this return, did you not, sir, in the spring of 1949?

A. Yes, sir.

Q. It was not late, was it, sir?

A. Yes, sir.

Q. How late was it, sir?

A. Looks like it was filed March 1, 1950.

Q. All right, sir. All right, sir. What instructions, if any, did you give to Mr. Anderson with reference to getting the memoranda together for a 1947 return?

A. None.

Q. And in March of 1950, sir, you told him to get information together for a 1948 return?

A. Yes.

Q. But you didn't tell him to get the information together for a 1947 return?

Mr. Wolff:

I would like to clarify the record. I think Mr. Cushman says in March of 1950.

Mr. Cushman:

That is right. He testified to March 1950. That is what he said.

Mr. Wolff:

With respect to the 1948 return.

The Witness:

I did not.

By Mr. Cushman:

Q. Well, it is possible, sir, and highly likely that I made a mistake. What did you use to figure March 1944?

A. You asked me when the return was filed?

Q. Yes, sir.

A. This return was filed August 19, 1949.

Q. I see, sir. All right, sir. It was filed August 19, 1949, sir?

A. Yes, sir.

Q. All right, sir.

A. It took about six months to get the information to file the return.

Q. Did you request an extension of time on this one?

A. Yes, sir.

Q. And you got it?

A. Yes, sir.

Q. But you didn't request one on 1947?

A. No, sir.

Q. All right, sir. Now you told Mr. Anderson what information to bring in to file that return?

A. Yes, sir.

Q. Told him what to do?

A. In 1949.

Q. All right, sir. Now let me ask you this question: Electing to report on the installment basis there in 1944, did you tell what—I beg your pardon, 1948—did you tell Mr. Anderson what figures he should have or did he tell you?

A. Well, he brought the information for us to work it out from. We asked the question if it had been reported on the installment basis, and Mr. Anderson said he didn't know. We don't have a copy of any return to go by. And I think you will find a letter there sometime where we wrote asking for a 1944 or 1945 copy that Mr. Anderson didn't have.

Q. All right, sir.

A. It was depreciation schedule brought in by Mr. Anderson, a copy of what he made in five years.

Q. You have been present in the Courtroom here for how many days, sir?

A. Well, I was here Wednesday, Thursday, and Friday.

Q. Of last week?

A. Yes, sir.

Q. And you have been present?

A. Most of the time. I was not here all the time.

Q. You have been present here and you have seen the voluminous testimony and the submissions and cross examination and whatnot with reference to the invoices Mr. Anderson kept. You have seen that, have you not?

A. Yes, sir, part of it.

Q. What attempt, if any, did you make to get Mr. Anderson's invoices into your office?

A. I am not sure of that, but I think Mr. Anderson brought in invoices for the years 1948 and 1949. Mr. Capers and Mr. McCutcheon got from the invoices all the information they could get.

Q. And what questions, if any, did you ask him with reference to—

A. I didn't ask him any; Mr. McCutcheon did.

Q. As a matter of fact, it is true, is it not, that having a power of attorney from Mr. Anderson that you completely ignored him with reference to his 1947 return?

A. No, sir. I did not ignore him at all. He never mentioned a 1947 return to me until away after the period was over. If he had, I would certainly have asked for an extension and cleared it over. Mr. Anderson never came to me to file income tax returns before.

Q. Did you make any efforts to file a late return for 1947?

A. I did not.

Q. I assume—

A. When you see the information he sent me to file it with, you will see why. It was impossible to file a return from the information he sent. He sent me his expenses but—

Q. And what correspondence, if any, did you send back to Mr. Anderson telling him that that information was inadequate and instructing him as to the proper information to bring to you?

A. We talked to him on two or three occasions about it. Mr. McCutcheon and Mr. Capers talked to him about it. He never did bring any income. He brought expenses but no income. He used income prior years.

Q. You did prepare the 1949 return?

A. Yes, sir. The same two persons prepared that one.

Q. When was that one prepared, sir?

A. I don't know if that was an extension or not. It would show on the front.

Q. I show you what purports to be a copy of Mr. Anderson's 19—

A. That is not the Collector's copy because it would be stamped. It was filed because it has entries here of $25.23.

Q. But it was filed late?

A. Yes, sir.

Q. At what rate is that interest computed?

A. Six per cent.

Q. Can you figure out the time it was filed at six per cent? You can do it backwards, can't you, sir?

A. It was approximately three months.

Q. Three months late?

A. Yes, sir.

Q. And it is your position that that return was probably filed sometime during the summer of 1950?

A. That is right.

Q. There is no question about the fact that your office did the work?

A. No, sir.

Q. And there is no question about the fact that on the document which you hold in your hand, which purports to be a copy of taxpayer's 1949 return, that the red stamp at the bottom is your stamp?

A. That is right, sir.

Mr. Wolff:

I object to the discussion of the 1949 return. I don't think Mr. Bedingfield has stated that they prepared it. I think that is sufficient. Going into the computation is something before this Court. I object

for that reason, Your Honor, in the interest of conserving time.

Mr. Cushman:

If Your Honor please, I think I can connect it up and I would like to use two or three more questions to do it.

The Court:

We are running pretty late, Mr. Cushman. We started in at one thirty. Let us proceed as fast as we can.

Mr. Cushman:

I will be finished in a few minutes. We would like to be finished with Mr. Bedingfield this evening if it is at all possible.

By Mr. Cushman:

Q. I will ask you to refer again, please, sir, to this 1949 return, this copy of this 1949 return, and ask you to refer to it and examine carefully the supporting schedules, please, sir.

A. All right, sir.

Q. Have you examined them, sir?

A. Yes, sir.

Q. All of the supporting schedules?

A. Yes, sir.

Q. All right, sir. Now will you state whether or not it is a fact that in the preparation of that return, sir, you elected to report for the taxpayer installment sales for the years 1945, 1946, 1947, 1948, and 1949?

A. We did not elect to report—we have a schedule for 1949, sir. We went back and tried to work it up.

Q. Now let us examine it carefully. That is why

I asked you. Go through and see if you don't find a schedule for 1945.

A. 1946, sir.

Q. And for what else?

A. For 1949, sir.

Q. All right. It is a fact, is it not, Mr. Bedingfield—

Mr. Wolff:

Your Honor, I want to renew my objection with respect to the 1949 filing by Petitioner. I don't believe it has any bearing on the testimony of Mr. Bedingfield; has no bearing with the case itself.

The Court:

He said he could show a connection here. I fail to see it as yet.

Mr. Cushman:

I think I can very shortly.

The Court:

I think we should allow him the two or three questions as he asked for.

The Witness:

Those exhibits were made trying to arrive at a proper figure for 1949.

The Court:

Oh, you were working up and working it back?

The Witness:

That is right, trying to work it back to arrive at a correct income for 1949.

By Mr. Cushman:

Q. Then it is a fact, Mr. Bedingfield, that in preparing this 1949 return you included installment sales which had been made originally in 1945?

A. We didn't include them, no, sir.

Q. You reflected them on the return for purposes of computing 1949 income?

A. Yes, sir.

Q. And you included on the return for the purpose of reflecting 1949 income installment sales which you have made in 1946, 1947, 1948, and 1949, did you not?

A. That is right.

Q. And from—

Mr. Wolff:

Objection, Your Honor. I do not believe they were installment sales in those years.

The Witness:

Showed the cost of sales of those years.

By Mr. Cushman:

Q. And one of my last questions, Mr. Bedingfield, is that in 1950, when you prepared the 1949 return, you had the information available as to 1947 sales, did you not, sir?

A. On the property, property sales?

Q. That is correct.

A. Now where it came from, I don't know.

Q. You mean to tell me you prepare a tax return and put your stamp on the bottom of it and you have on concept of where the information came from?

A. I did not prepare the return.

Q. Who did?

A. Mr. McCutcheon and Mr. Capers.

Q. They are in your office?

A. Yes, sir.

Q. And whose name is on the return, sir?

A. Hugh Bedingfield & Company stamp on the returns, sir.

Q. The fact remains that in the spring of 1950 you had information about 1947 sales, of sales of property?

A. I presume so by this.

Q. Yes, sir. And to what use, if any, did you put that information, sir, with reference to protecting the taxpayer in regard to his 1947 return?

A. Not any except what you see here. Got 1945, 1946, and 1947 on houses there.

Q. Just one last question or two here with reference to this 1949 return. I direct your attention to the first supporting schedule thereon and ask you whether or not you didn't specify the capital gains on 1945 installment sales, 1946 installment sales, 1947 installment sales, 1949 installment sales, and 1949 installment sales?

A. It looks like Mr. McCutcheon did.

Q. And both you and Mr. McCutcheon are familiar with the installment method of reporting income?

A. Yes, sir.

Q. And you are familiar with the requirements of law with regard to reporting such income?

A. Yes, sir.

Q. And is it not a fact that you thought the information was correct?

A. Yes, sir.

Q. And you—

A. I am sure they thought the information was correct.

Q. And it is your custom to do that, isn't it sir?
A. Yes, sir.

Mr. Cushman:

We would like, if Your Honor please, to offer into evidence this copy of Petitioner's 1949 tax return.

Mr. Wolff:

I will object on the very basic objection, Your Honor, this is not the original return, it is not a copy of the return. The Statute provides for the acquiring of the certified copy of the particular return of a taxpayer from the Collector of Internal Revenue. That is not such a document.

Mr. Spillane:

Here is the photostat of the one that was filed with the Collector's stamp on it.

Mr. Wolff:

I make the further objection at this time, Your Honor, that on this photostat it is not shown that this was one that was furnished. The first page has a statement, I mean appears to be the first page of the return that was filed, but nevertheless these supporting schedules do not show that. I don't know where the document came from. In addition, this is 1949, and I don't think anything has been shown to connect this up with the earlier years, 1948 and prior years.

The Court:

I will have to sustain the objection because there is a specific way of getting in returns of this Court and they must be certified copies, unless the Petitioner wants to agree what it is.

Mr. Cushman:

I think we have the lady in the room that would have it.

The Court:

Do you want to call the witness as soon as we get through with this witness?

Mr. Cushman:

All right.

Assuming that we could produce the record from the original or get the copy in—excuse me.

Mr. Wolff:

I will withdraw the objection with respect to this not being a certified copy, Your Honor, if we have the assurances of counsel here that it is a true copy of the return that was filed. In addition, I do not want to withdraw my objection with respect to its relevancy inasmuch as it relates to later years.

The Court:

I would like to have the statement as to the relevancy.

Mr. Cushman:

Your Honor, it is relevant I think on two grounds, sir. The Government is charging Mr. Anderson with failure to file a tax return for the year 1947: first of all with the intent to defraud the Government by concealing material facts with reference to his tax liability, and second for failing to file a tax return without reasonable cause. We have maintained throughout this pleading that Mr. Bedingfield was his counsel, his advisor; that he knew or had informa-

tion which was available to him by which the rights of the taxpayer could have been protected. We think, sir, that the 1949 return which was prepared by Mr. Bedingfield and filed by him shows on the face of it that he knew the taxpayer had made sales in 1947; that he knew the taxpayer had not filed a 1947 return; that he had sufficient information available to him to reconstruct installment sales from 1945, 1946, and 1948. We submit that that is very competent and pertinent evidence.

The Court:

Now, when was this filed?

Mr. Cushman:

This was filed in August of 1950, sir, about the middle of the summer.

Now we further take the position, sir, that when the information became available, and with reference to the issue of fraud, if Your Honor please, we think it is competent to show that in 1950 that the taxpayer of his own volition reported sales in prior years beginning with 1945 which he had not reported in those days, that that is pertinent on the issue of fraud.

The second thing is that Mr. Bedingfield had information which could have been used to protect the taxpayer from the medium of filing a late return or certainly by some correspondence with the Collector of Internal Revenue to protect him from the delinquency and fraud penalty.

The Court:

We will let it in for whatever its bearing may be on the issue.

Mr. Wolff:

I do not understand that this copy they had, they were willing to certify that—

The Court:

Are you satisfied it is a true copy?

Mr. Spillane:

We honestly believe it is.

Mr. Cushman:

We make the utmost true statement that it is, in good faith with the Court.

The Court:

I don't know whether that is sufficient or not. I think you should be sure that it is.

Mr. Spillane:

There is the Internal Revenue statement.

The Court:

Who had it made?

(Discussion off the record.)

The Court:

We will receive it, subject to checking.

Mr. Cushman:

All right, sir. Good.

That concludes the cross examination of the witness.

The Court:
Any redirect examination?

Mr. Wolff:
Yes, Your Honor, I might have several questions.

The Court:
Will it take long?

Mr. Wolff:
No, Your Honor.

Re-Direct Examination.

By Mr. Wolff:

Q. Mr. Bedingfield, you do not know for a fact whether or not a power of attorney was signed, do you?

A. I do not know definitely, sir.

Q. These negotiations that you had with Mr. Anderson, were they possibly negotiations leading up to a representation by you or were you—

Mr. Cushman:
It is a leading question, Your Honor, and calls for a conclusion of the witness.

The Court:
It is a leading question. He is your witness.

By Mr. Wolff:

Q. Do you know for a fact, Mr. Bedingfield, whether or not you ever had any books of Mr. Anderson's?

A. I do not, only by what Mr. Anderson says.

Q. This letter dated September 24, 1949, that was a letter you received from Mr. Anderson?

A. That is right.

Q. That is the only information you received with respect to the 1947 return?

A. As far as I know, that is all I received.

Mr. Wolff:

I would like to introduce this as Respondent's Exhibit FF.

Mr. Cushamn:

We certainly have no objection to this, Your Honor. As a matter of fact, we are pleased to get it.

The Court:

You sound pleased to get it.

It will be received.

(Respondent's Exhibit FF marked for identification and received in evidence.)

By Mr. Wolff:

Q. Did you ever give any books to Mr. Orr that belonged to Mr. Anderson?

A. No, sir.

Q. Do you recall ever giving any books to your son to give to Mr. Anderson?

A. No, sir.

Q. It is customary to prepare returns from information furnished by the taxpayer, is it not?

A. Yes, sir.

Mr. Cushman:

I object, Your Honor. That is calling for a conclusion. The man holds himself out to be an accountant, to practice accountancy and represent people. Let's just examine the circumstances of the case. The particular type of representation to customary habits applies here. I object to it as calling for a conclusion of the witness as to the specific transaction.

Mr. Wolff:

I don't refer to any specific transaction, Your Honor.

The Court:

I think this witness is experienced and able to testify as to what is customary.

Mr. Wolff:

No further questions, Your Honor.

Mr. Cushman:

No further questions.

(Witness excused.)

Mr. Cushman:

We have compared this with the original tax return. We have compared it, it is right.

The Court:

It will be received.

(Petitioner's Exhibit No. 38 marked for identification and received in evidence.)

The Court:
Would the parties care to convene at nine thirty tomorrow?

Mr. Cushman:
We are agreeable, Your Honor.

The Court:
Is that agreeable with Government counsel?

Mr. Wolff:
Yes, Your Honor.

The Court:
We will adjourn until nine thirty tomorrow.

(Whereupon, at 6:00 o'clock p.m., a recess was taken until 9:30 o'clock a.m., Tuesday, October 18, 1955.)

Hearing at Columbia, South Carolina.

Date: October 18, 1955.

(Title Omitted.)

United States Courthouse,
Columbia, South Carolina,
Tuesday, October 18, 1955.

The above-entitled matters came on for further hearing, pursuant to recess, at 9:30 o'clock a.m.

Before: Honorable Craig S. Atkins.

Appearances:

E. C. Cushman, Jr., Esq.; L. E. McNatt, Esq., and T. R. Spillane, Esq., for the Petitioner.

Herman Wolff, Jr, Esq., for the Respondent.

Proceedings.

The Court:

Good morning.

Mr. Wolff:

I would like to call Mr. George C. Labouseur from the Georgia Railroad Bank & Trust Company.

Whereupon, GEORGE C. LABOUSEUR, was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

The Clerk:
State your name and address, please.

The Witness:
George C. Labouseur; 1109 Broad, Augusta, Georgia.

Direct Examination.

By Mr. Wolff:

Q. Mr. Labouseur, are you here in response to a subpoena issued on your bank for all records relating to your bank's dealings with L. T. Anderson during the years 1940 to 1948?

A. Yes, sir.

Q. Do you have those records with you?

A. Yes, sir.

Q. Specifically with reference to a safety deposit box maintained by Mr. L. T. Anderson, do you have those records with you?

A. Yes, sir.

Q. Mr. Labouseur, will you state in whose name that safety deposit box was maintained?

A. According to the bank's records, we had a box that was opened in the name of Ozzie Faglie, Mary P. Anderson—I believe it was Mary Poole Anderson—and Mr. L. T. Anderson. That box opened with us in April of 1936 and it ran until January of 1951.

Q. Until when?

A. January of 1951 when it finally terminated the contract.

Q. Do you have the entry card of the bank with respect to entries made in that safety deposit box?

A. Yes, sir.

Q. Would you state what that card shows?

A. The record shows that there were a total of sixty-two entries made during the period that was in force. Mrs. Faglie, there were no records at all that she ever entered the box. We have six entries of Mrs. Mary P. Andrson, and the remaining entries were by Mr. L. T. Anderson. Would you like the dates on which Mrs. Mary Anderson—we have them all right here.

Q. Did Mrs. Mary Poole Anderson enter the box any time between 1941 and 1948?

A. We show that there was one entry on May 27, 1947, when Mrs. Anderson entered the box.

Q. What is the last entry shown on your card?

A. The last entry was January 6, 1951, when the box was closed. And Mrs. Anderson was the one that came in and received the contents and closed the box.

Q. What do the records of the bank disclose with respect to dividends paid to Mr. L. T. Anderson during the years 1946, 1947, and 1948?

A. Well, now the way we have it broken down, we show that from 1943 on through 1948—

Q. Dividends were paid?

A. Dividends were paid during those years.

Q. Would you state what your records show with respect to those dividends paid?

A. There was a note paid from October 1943 through October 1948 of $1,044.

Q. To whom?

A. To Mr. Lewis T. Anderson.

Q. Were dividends paid to Mary Poole Anderson during those years?

A. We show that apparently there was nothing in 1943, but from January 1944 through October 1948, $81.50 was paid to Mrs. Anderson.

Q. With respect to the dividends paid in 1946, 1947, and 1948, upon how many shares of stock were those dividends paid to Mr. L. T. Anderson?

A. Well, it says—now 1946, we show from 1945 through 1948.

Q. What do your records show with respect to that?

A. Thirty-four shares during that particular period from 1945 through 194[illegible]

Q. In the name of Mr. L. T. Anderson?

A. Yes, sir.

Q. How mny shares in the name of Mary Poole Anderson during that period?

A. From 1945 to 1948 there were twenty-four.

Mr. Wolff:
No further questions, Your Honor.

Mr. Cushman:
No questions.

The Court:
Thank you, Mr. Labouseur.

(Witness excused.)

Mr. Wolff:
I would like to call Mr. Roy Orr.

Whereupon, ROY H. ORR, was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

The Clerk:

State your name and address, please.

The Witness:

Roy H. Orr; 44 West P Street, Atlanta, Georgia.

Direct Examination.

By Mr. Wolff:

Q. How old are you, Mr. Orr?

A. Forty-two.

Q. Where were you born?

A. Columbus, Georgia.

Q. How long did you live in Columbus, Georgia?

A. Up until 1935.

Q. Did you attend high school in Columbus?

A. Yes, sir.

Q. Would you give the Court some idea of your educational background?

A. After finishing high school, I worked around on the farm with my father and did odd jobs during the summertime in 1935. I moved over to Gainesville, Georgia, and went to school at night at a business school. Then I took the correspondence course in accounting in the International Accounting Society. After coming with the Government, I finished three accounting courses with the Government and by correspondence; income tax courses, and evidence and procedure.

Q. You are presently employed with the Internal Revenue Service?

A. Yes, sir.

Q. How long have you been employed with the Internal Revenue Service?

A. Since August 23, 1943.

Q. What was the nature of your duties commencing in 1943?

A. From August 1943 up until May of 1955, I was a deputy collector assigned to collection, securing delinquent returns and making investigations on income and excise tax returns. Then from 1945 up until May 1951, I was assigned to investigations 100 per cent of the time except on special assignments of other work. Then from May 1951 until about the same time in 1952, I was a division chief over in north Georgia, and from May 1952 up until August of this past year I was chief of the office audit branch. And on August of this year I was made Assistant Chief of the Collecting Division.

Q. During your work as an investigator, what type of cases did you work on generally?

A. Well, I think I worked about every type that you could name on the thing. I checked lawyers, doctors, preachers, farmers, and real estate dealers.

Q. Mostly individuals?

A. Yes, sir, individuals mostly. A few partnerships, one or two corporations. Mostly individuals.

Q. During the course of your investigative duties, were you ever assigned to investigate the returns of Mr. L. T. Anderson?

A. Yes, we have. I would like to explain that a little bit. We have what we call the Classification Section in the Director's Office, which was the old Collector's Office, and they classify the various types of returns that they want to be audited. They sent

those out to the men stationed in the zone offices over the state.

Now the 1944 income tax return filed by Anderson was sent down in that order, and during 1947 that was in my inventory. My inventories got heavy and I could not handle all of it, so Mr. Cobb, who was my immediate supervisor, sent John Ward from Savannah up to Augusta to help work on the cases I had. Now the cases in my possession were divided up into two groups: the ones I had made contacts with the taxpayer, and the ones I had not. Mr. Ward had the privilege of working on some of those I had not made contact with, and that happened to be Mr. Anderson's case, one of them he selected. Then later I got into the case.

Q. Mr. Ward, then, made the initial contact with the taxpayer?

A. That is right.

Q. When did you come into the picture?

A. Well, it was very shortly, a day or two after Mr. Ward had contacted Mr. Anderson—I don't know, either by phone or in person in his home, and then he came to the office. And Mr. Crawford, who is in charge of the office, got in touch with me and asked me to sit in on the conference because he thought it was getting a little heavy for Mr. Ward who had not been in investigation too long at that time.

Q. What do you mean by "a little heavy"?

A. There were numerous real estate sales, and there was the question of depreciation and a lot of things that they were discussing.

Q. Was Mr. Ward experienced in these matters?

A. At that time I don't believe he had been on investigation too long.

Q. That was the first time you met Mr. Anderson?

A. Yes, sir, that is correct.

Q. And it was in the office of the—

A. Third floor of the post office building in Augusta, Georgia.

Q. On this initial visit, state whether or not a statement was obtained from Mr. Anderson.

A. It was obtained later during the day from Mr. Anderson. At the time he first came in he did not have any of his books and records. We discussed with him how he acquired the properties shown on his return and when, and general discussion indicated that he had increased his net worth considerably over the years. He told us he did not have accurate records.

Q. Did this discussion start with the 1944 return?

A. Yes.

Q. And developed into the net worth?

A. That is right. Well, it happened—I am following this statement I made a moment ago. His discussion indicated that he had bought securities and built a lot of houses and purchased a lot of land, so we asked him would he mind us inventorying his safe. And Mr. Anderson agreed to go with us and did go over to the C & S Bank and entered the safety deposit box at the bank and also went up to the Georgia Railroad Bank & Trust Company, uptown branch. Later in the afternoon we inventoried the safe at his home.

Q. When did you obtain this statement from him?

A. At his home in the afternoon.

Q. At that time after you had inventoried the boxes?

A. Yes, sir.

Q. With respect to the inventory of the boxes, did you find shares of stock in the Georgia Railroad Bank

& Trust Company in the safety deposit box maintained in that bank?

A. We found a good bit of stuff. Now to get down to the box, it was located—I have an inventory of the contents of each one of the boxes that was prepared by John Ward. I mean it is in his writing.

Q. And how was that prepared? You called it off to him?

A. That is right, and we both looked at the documents. Some of them we were in doubt as to the exact date of issue, so we called it off in Mr. Anderson's presence.

Q. Which inventory is that that you have before you?

A. The sheet that I hold in my hand here is a yellow ruled paper. First is listed at the top "Inventory of Safety Deposit Box—Page 1," and the last page is numbered 20.

Q. In which bank was that?

A. This covers both banks and also the inventory of the safe in his home.

Q. Did you find separate certificates with respect to the ownership in the Georgia Railroad Bank & Trust Company?

A. Well, let's see. In the Georgia Railroad Bank we found there was some several coins and gold coins; deed for Faglie and Anderson, L. T. Anderson and Mary Poole; division of some land. And then there is some real shares of Boston Edison, five shares of American T & T in Mary Poole Anderson's name. Then there was some Riverside mill stock, no name on that. There was two of those on Riverside, Nos. 611 and 610. There was no name on that. That is about the extent of it. There might have been a few other things.

Q. What was your next contact with Petitioner, L. T. Anderson?

A. You mean after the day we made this thing?

Q. Yes, sir, after you took his statement.

A. Sometime a few days after that I received a telephone call from Mr. Bedingfield's office. Mr. Anderson was up there and they wanted to know what records we wanted from Mr. Anderson. We had given Anderson a list to get up for us, and in this list we asked for all bank statements for the years 1941 to 1946, inclusive; all records of sales and expenses for the years 1941 to 1946, inclusive; list of all the equipment, dates purchased, and the cost; list of all the real estate purchased, dates purchased and cost and amount of sale.

My understanding at that time was whether or not —they wanted to know what we wanted, because Anderson was kind of upset because we asked him for all these records he said he didn't have. And we more or less dropped the case to give Mr. Anderson a chance to get his records together, except the next day we did go down to see his mother and his sister.

Q. Did you obtain a statement from his sister?

A. Yes, sir.

Q. Did you obtain a statement from his mother?

A. Yes, sir. Mr. Ward did the writing.

Q. In the net worth statement prepared by you, Mr. Orr, did you include in that net worth statement securities that were listed in the name of Mrs. Mary Poole Anderson?

A. I did.

Q. Did you include in that net worth statement of Mr. Anderson securities listed in the name of Mrs. Ozzie Faglie?

A. I did.

Q. Would you tell the Court why you did that?

A. The affidavit that we had secured from Mr. Anderson on June 2 stated that there was not any cash that they received from the estate from his father, who died in 1929. And he also stated that there was some land which they divided up. We followed that up with the contact with his mother, and she gave us the same story that she had not received money from her husband's estate because he had been sick several years prior to his death and he had left considerable medical expenses and they had to sell some of the farm machinery and livestock in order to pay the medical expenses and funeral bill.

Q. Did you obtain statements from Mrs. Anderson on two different occasions?

A. Yes, sir.

Q. When was the second occasion?

A. I believe it was in February of 1950.

Q. Was the substance of that statement about the same as the statement previously received?

A. It was. And I would like to state on the first time that Mr. John Ward was present and he did the writing and asking the questions, and the second time Mr. John Spence was present and Mrs. Anderson spoke very freely and gave us all the information there that—she stated in those statements that she had—

Mr. Cushman:

Your Honor, I believe we would like to submit to the Court that any statements made by Mrs. Faglie or Mrs. Anderson when the Petitioner was not present, regarding the case here, come under the hearsay rule and are inadmissible.

The Court:
What do you say, Mr. Wolff?

Mr. Wolff:
The witness has testified that he made certain computations in the net worth statement including securities in the names of Mary Poole Anderson and Ozze Faglie in the net worth statmen of Mr. Anderson. I am going into why did he include these, based on Mrs. Anderson's statements.

The Court:
Of course those are in writing?

Mr. Wolff:
Yes, sir.

The Court:
Well, are they in evidence?

Mr. Wolff:
No, Your Honor.

The Court:
Well, it is true that this would be hearsay as far as the taxpayer is concerned. It would not be on financial gains interest as far as he is concerned, so I think you will have to rely upon your written statements.

By Mr. Wolff:
Q. Mr. Orr, I show you Respondent's Exhibit DD which has been identified. Will you state if this is the statement that you obtaned from Mr. Anderson?

A. It is. It was written by John Ward, and I witnessed Mr. Anderson's signature.

Q. On the four sheets?

A. Yes, sir.

Mr. Wolff:

I introduce into evidence, Your Honor, the statement of Mr. L. T. Anderson as Respondent's Exhibit DD.

Mr. Cushman:

No objection.

The Court:

It will be received in evidence.

(Respondent's Exhibit DD was received in evidence.)

By Mr. Wolff:

Q. Mr. Orr, I show you Respondent's Exhibit EE which has been identified and ask you if that is the statement received from Mrs. Ozzie Faglie.

A. It is. It was written and prepared by John Ward, and it is possible that part of this is Mrs. Faglie's wriing. I witnessed her signature.

Mr. Cushman:

We object to the admission as not showing that the taxpayer was present, and the mere fact that other words are used does not stop it from being hearsay. If the statement is to be admitted against the interest of the Petitioner, I think it is very definitely hearsay.

The Court:

Was that not the subject of testimony? Which exhibit is that?

Mr. Wolff:

The exhibit of Mrs. Faglie, Respondent's Exhibit EE, which was identified. Mrs. Faglie did identify the signature at that time as being her own signature.

The Court:

As I remember it, Mrs. Faglie was examined on the subject of the statement. I think she admitted that was her signature. And as I remember it, her testimony was somewhat in variance with this statement. It seems to me it should be in evidence in regard to her direct testimony.

What do you think?

Mr. Cushman:

Do I understand the statement should be in evidence as a means of impeaching her testimony?

The Court:

Either impeaching or corroborating. I am not sure how her statement will stack up with the statement. I have not read the statement.

Mr. Cushman:

I think that if it is for impeachment purposes that he should have submitted the statement to the witness, pointed out the inconsistencies, and afforded the witness an opportunity to explain. I think that is the proper foundation for impeachment.

The Court:

I agree with you. I think she was presented that opportunity. And she read the statement yesterday as I recall, did she not?

Mr. Wolff:

Yes, sir, Your Honor.

Mr. Cushman:

I am not sure she ever got her hands on that statement. I think she was shown and asked, Is that your signature? and—

Mr. Wolff:

She read the statement before she would say whether or not it was her signature. She was asked several times.

The Court:

She seemed to hold it quite a while, seems she had to read it.

Mr. Wolff:

In addition, this is also introduced not only for impeachment purposes but to show why the agent included her stocks in Mr. Anderson's net worth statement. It certainly shows a basis that the inclusion was not arbitrary, that here is a basis for including her securities in Mr. Anderson's net worth.

Mr. Cushman:

I listened very carefully, and I fail to see the connection at all. I think that Your Honor can well decide the issue. If you would like to have this understanding, that certainly this statement is not admis-

sible against the taxpayer. We are not receiving it for that purpose.

The Court:

Certainly as not against the taxpayer. That is certainly true.

Mr. Cushman:

Is it admissible against him as reflecting in any way upon the taxpayer?

The Court:

I can see that what the Government is trying to do is determine the ownership of certain properties, and Mrs. Faglie was questioned and this was her statement. I think it should be properly in evidence, and I rule on it as in evidence.

Mr. Cushman:

All right, sir.

Mr. Wolff:

Respondent's Exhibit EE introduced into evidence.

(Respondent's Exhibit EE was received in evidence.)

By Mr. Wolff:

Q. You referred to two statements received from Mrs. Mary Poole Anderson. I show you the first statement dated the 3rd of June 1947 and ask you if that is the statement received from Mrs. Anderson, consisting of two pages.

A. It is.

Q. I show you a second statement dated the 16th day of February 1960, consisting of three pages, and ask you if that is the second statement received from Mrs. Anderson.

A. It is.

Mr. Wolff:

I would like to offer into evidence, Your Honor, as Respondent's Exhibit GG the two statements of Mrs. Mary Poole Anderson, one dated 3 June 1947 and the other 16 February 1960.

Mr. Cushman:

We respectfully object to the admission of this evidence on ground one that it is obviously hearsay testimony; ground two, that the Petitioner himself was not present when the statements were taken, and that by no stretch of the imagination can they be construed as being binding declarations against him or against hs interest; and as ground three the further ground that Mrs. Anderson has been present here in the Courtroom and is under subpoena by the Government and her signature has never been identified. She has never been put on the stand, and she has never given any testimony with reference to these statements, which I understand is a basis with reference to it. A totally different situation exists here.

Mr. Wolff:

The signature has been witnessed and has been identified by Mr. Orr as being the signature of Mrs. Mary Poole Anderson. This is the statement received from Mrs. Mary Poole Anderson, and it would seem

that if for no other purposes it is admissible to show the basis upon which the net worth was computed.

Mr. McNatt:

If the Court pleases, Mrs. Anderson is available and this statement is not the best evidence. This statement is, in effect, an affidavit; and I believe the rules of the Court specifically provide that affidavits are not admissible. They could be admissible for impeachment but not to establish the fact.

Mr. Wolff:

With respect to Mrs. Anderson testifying, she is available to the subpoena.

Mr. Cushman:

Does the Government subpoena witnesses they never mean to use?

Mr. Wolff:

I don't state that.

The Court:

I am inclined to sustain the objection, Mr. Wolff, unless there is some other rule which would permit this in evdence that has not been advanced. It seems to me that it is hearsay since the witness is available. She is able ti testify, is she?

Mr. McNatt:

I presume so, sir. She was over here yesterday in the Courtroom.

Mr. Wolff:

Petitioner's counsel made the statement of her incompetency, perhaps; at least implied it.

Mr. McNatt:

I think if counsel wants to rely on that, that is further reason.

Mr. Wolff:

These are statements for 1947 and 1950.

Mr. McNatt:

I do not see whether there is any question, Your Honor, as to what the best evidence would be of Mrs. Anderson; and until they account for her absence, I see no grounds to admit the affidavit.

The Court:

I am agreed with the counsel for the Petitioner.

Mr. Wolff:

This merely applies as to why did the agent include Mrs. Anderson's securities in Mr. L. T. Anderson's net worth. Now the—

The Court:

If it were received for that purpose alone, I can see the possibility of admissibility. On the other hand, that is dangerously close to trying to prove something by hearsay evidence. If you want to admit it for that purpose alone, it would be received.

Mr. McNatt:

If the Court pleases, I would like to advance one more theory. The admission of this statement de-

prives us of the right of cross examination which is a matter of right in Federal Court at all times.

The Court:
I understand that, and I sustain your receipt in evidence of that as to the fact.

Mr. Cushman:
All right, sir.

The Court:
Do you care to submit it for that limited purpose?

Mr. Wolff:
All right.

The Court:
It will be received for the limited purpose.

(Respondent's Exhibit GG marked for identification and receved in evidence.)

By Mr. Wolff:
Q. After requestng the various books and records from Mr. Anderson, Mr. Orr, what were the next steps taken in the case?
A. After inventorying the safe, we picked up three books from his home.
Q. When did you get these books, on the same day?
A. Yes, sir. June 2, 1947, I believe was the date we picked those books up.
Q. Mr. Orr, I hand you Petitioner's Exhibit 23 and ask you if that was one of the books that you inventoried?
A. No, it is not.

Q. I hand you Petitioner's Exhibit 23 and ask you if that is one of the books you inventoried?

A. Yes, this one is.

Q. I show you Petitioner's Exhibit 25 and ask you if that is one of the books?

A. Yes, it is.

Q. I show you Petitioner's Exhibit 26 and ask you if that is one of the books?

A. No, I did not see that book.

Q. I hand you Petitioner's Exhibit 27. Did you see that book?

A. No, sir, I did not see that one.

Q. In other words, you have seen two of the five books?

A. That is right.

Q. That were submitted in evidence by the Petitioner.

A. Yes. I made a transcript of the three books that I received from Mr. Anderson and recorded it in these sheets I have here is the reason I am positive about the books that I saw.

Q. What was contained in the third book?

A. Well I have them listed this way: Book No. 1, which I marked on the outside for identification, and it had a heading "Income Tax Book—1944." And it was in a Skywriter's No. 580 Composition Book, rule seven by eight and a half, smooth paper, and it started off, "Page 1, C & S National Bank" and had some entries in it.

Q. Generally, what did those entries relate to in the three books that you saw?

A. Sales of real estate that he had made.

Q. Did these books contain any cost records?

A. Very few of the places he showed cost, certain amount. But most of them listed the description of

the property showing the house and name and number in some cases, the year in which it was sold, the selling price, the amount paid down on the loan. Then it had written in there "Cost," but it was blank in most cases.

Q. The deficiencies determined in your statement, were they not on the net worth basis?

A. Yes, sir, they were.

Q. Would you state why you went to the net worth basis?

A. Mr. Anderson said the three books he gave me were all the records he had. As I stated before, we had given him a list of the things we needed to try to prepare an operating statement. We left the case in 1947. I worked on it two or three days. Various times I contacted Anderson to see if he had those records. I carried his records back to him on January 30, 1948.

Q. How do you know you returned them on January 30, 1948?

A. I have a notation on the file, the date returned back, and I have a witness James A. Brody from Augusta who went with me.

Q. You made a notation on your records?

A. Yes, sir.

Q. As to the return of the three books?

A. And I wish I had my daily reports and also my travel voucher that I was at his house at such a date.

You said something about the net worth statement. Why we got on to it was the fact that I think anyone that will examine these three books, if they had them, could not determine the income that Mr. Anderson had during the years under investigation. It was necessary for us to use the public records, his records

that we had inventoried, and discussion with Mr. Anderson, discussion with the people that had signed these security deeds in order to prove the figures that we put on our net worth statement.

Mr. Cushman:

We sure are going to object to that one as being a statement of a conclusion of the witness. A further ground, Your Honor, it is a self-serving declaration by a Government agent.

The Court:

I think this is an explanation of why he did proceed with his net worth statement, but nevertheless it does not necessarily prove that the issue has—

Mr. Cushman:

We just did not want the record to go blank as far as we were concerned on this particular statement of Orr.

By Mr. Wolff:

Q. I show you Petitioner's Exhibit 25 and ask you if that exhibit has been compared, or is the original of the document you have before you of the computation of net worth?

A. It is the same.

Q. With respect to the net worth statement before you, I would like to ask you to explain certain items to the Court. Starting with lines a" and b" on Schedule 1, how did you compute those, Mr. Orr?

A. We used the bank records to show the balances at the end of each year.

Mr. McNatt:

I believe most of those items are stipulated. I see no reason—I have no real objection to it, of going in and computing how he got it. Obviously he got it from the bank statements and we are in agreement. It seems to me it would be time-consuming.

The Court:

What is your purpose of putting it in, Mr. Wolff?

Mr. Wolff:

I wanted to show exactly the detail and the way that this statement was worked up and the time-consuming portion of the statement. We have stipulated, for example, everything on Schedule 2 except as to ownership, but that has nothing to do with the many hours that went 'into the computation and preparation.

The Court:

Is this a continuation of the previous line of testimony?

Mr. Wolff:

Yes, Your Honor.

The Court:

As to why he found it necessary to go to the net-worth method?

Mr. Wolff:

I think he stated as to why he went on to the net worth statement, and now getting into the net worh I inend to elicit from him how he computed the various items on the net worth.

The Court:

Well, there seems to be no formal objection on the part of the Petitioner. However, since the items are stipulated, unless you have some other purpose in mind, I would see no real reason for putting it in. But go ahead, you try it your own way. Perhaps you can take some of those at random, or do you want to go through the whole thing?

Mr. Wolff:

I think it would probably take fifteen to twenty minutes, but I think it would be a full explanation.

The Court:

All right.

By Mr. Wolff:

Q. With respect to lines c, d, e, and f under "Security Deeds in Akin County," would you explain those listings, Mr. Orr?

A. I believe I can explain Schedule No. 2, which is the Security Deeds in Akin County, and kind of give you an example which will cover each one of those you have named there.

The first item shown on there is B. J. Sample, and it goes on down through Whitecotten. We used the deed records in Akin County which shows the grantee to be L. T. Anderson. We used the amounts shown in the security deeds which is evidenced by one note payable over the period of time and dropped it out and marked "Satisfied" in the year in which the Court has records to show it was satisfied.

We get down to the real estate security deeds and go back to the point where we find that Mr. Anderson bought land. He has a warranty deed of record in

Akin County and also plats over there showing he cut off certain strips of this land and sold it to these people. His income tax returns will show depreciation on some houses that were built in this period. But the records will also show a security deed recorded.

Now, for example, if a sale was for $3,500 and he had a down payment of $500, it would leave a note or security deed for $3,000. It might be payable over a period of months. For example, some of them run as high as 240 months at $20 a month. In this case he recovered $3,800.

Now the monthly payments included principal and interest. Now in order to try to break down the part with principal, we know that the payments to the taxpayer from the liquidation consisted of both interest and principal. The Book of Amortization Schedule obtained from the C & S Bank in Augusta was used to determine the amount of payments applicable to the principal and interest. The amounts applicable to the principal paid on each security deed were deducted from outstanding balances to determine the amount owed on each security deed at the end of the year under investigation. We could not bring that book with us, but we borrowed one from the C & S Bank here in Columbia which is the same edition. It is a monthly payment Direct Loan Amortization Schedule, 5th Edition. This book was used and we did reduce the principal amount each year by the figures shown in the book. Now the same thing applied to the security deeds over in Richmond County and the others where these amortization tables were involved.

Q. On Petitioner's Exhibit 16, Mr. Orr, there are certain deeds shown in Schedule 2 which are claimed by the Petitioner to belong to the mother and daughter. Why did you include those in Mr. L. T. Anderson's name?

A. The records, we are getting back first to the affidavits we secured back in 1947 and this investigation was completed in 1950, but the records over in the Courthouse at these various places show that the deed was made to Mr. L. T. Anderson. Most of them was L. T. Anderson. Back in Richmond County I believe they were all L. T. Anderson.

Q. Now this explanation you have given for Schedule 2 applies also to Schedule 3?

A. The security deeds recorded in each would be the same.

Q. Which schedules are those?

A. Schedule 2 covers security deeds, Akin County, South Carolina; Schedule 3 covers security deeds in Richmond County, Augusta, Georgia; Schedule 4 is security deeds recorded in Jefferson County, Georgia; and Schedule 5 in Burke County, Waynesboro, Georgia.

Q. Now with respect to the security deeds of Richmond County, Georgia, Petitioner's Exhibit 15 has listed several deeds in the name of the mother and one in the name of the daughter. Why did you include those in Schedule 3, in Mr. Anderson's net worth?

A. We have photostats here which have been certified from the clerk of the Court in Richmond County which show they were in Anderson's name.

Q. The same is true with Petitioner's Exhibit 14 relating to security deeds in Jefferson Cotuny, Georgia?

A. Some of these places did not have photostatic equipment and they gave us certified copies.

Q. You obtained the certified copy of each of the security deeds in Schedules 2, 3, 4, and was it 5 also?

A. Yes, I believe that is right.

Q. These security deeds are all in the name of Mr. L. T. Anderson?

A. Yes, except as otherwise shown. In Richmond County I am sure they will show.

Q. What do you mean?

A. In Akin County, South Carolina, L. T. Anderson, his heirs, and—

Q. States no other names?

A. No other names whatsoever.

Q. With respect to line "g" on the net worth statement, "Other Loans for L. T. Anderson," where did you get those figures, Mr. Orr?

A. I believe they came from records furnished by Mr. Anderson which were not recorded in the Courthouse records. Now many of these loans were paid out before we were there and we did not get to see the note. We included them, to be sure, to Mr Anderson in the opening years; anything that he was able to show us, you know, tell us about.

Q. You mean certain financial statements? Is that where you got the information?

A. Yes, sir, and statements from Mr. Anderson.

Q. We have stipulated certain other items, Mr. Orr, with respect to these loans. Can you explain why they were not originally included in his net worth?

A. No, sir. They were not discussed with us at that time.

Q. With respect, Mr. Orr, to lines h, i, j, and k on the net worth statements, being "Real Estate Holdings Situated and Recorded in the Following

Counties," would you explain over on Schedule 7 how those were computed?

A. We have, for example, in Akin County, warranty deeds showing the book and page. We have certified copies of those showing the property that Mr. Anderson acquired. It shows the book and page at which it was recorded, and in most cases the costs were determined from the warranty deed.

With respect to improvements, the costs were obtained from the depreciation schedule. Some of those Mr. Anderson stated were prepared by Baird & Company for properties held prior to 1941, and this was used to determine cost for improvements for properties, were determined from depreciation attached to income tax returned over the period examined, except in some instances where adjustments were the result of our riding around with Mr. Anderson and the adjustments made at the costs were appropriate.

Now Mr. Anderson rode with John Spence and me all over the property over in Akin County, South Carolina, which covered North Augusta and the Druid Hills section, I believe is what he called it, and also part of the property in Augusta that we were unable to locate. We looked at each house down in Sand Bar Ferry Road.

Q. Other than the income tax returns and depreciation schedules contained therein and your discussions with Mr. Anderson, were there any other records of the Petitioner from which you could compute costs?

A. No, there was not. I would like to state in those books that I received on one or two of the sales—

Mr. Cushman:

We object to the statement that there were no other records from which income could have been

computed. The witness very definitely stated there were voluminous records, public records and what not, and we have produced them in the Courtroom. That is a conclusion of the witness and should be stricken.

The Court:

Ask him if he knows, I suppose.

By Mr. Wolff:

Q. State whether or not, Mr. Orr, if any other records, other than the retained copies or the copies of the income tax returns in Mr. Anderson's statements, were available or made available to you in computing the costs of the various properties.

A. They were not.

Mr. Cushman:

Same objection, Your Honor. Further self-serving declaration, any way you look at it.

The Court:

I think it is proper for him to state whether the other evidence was offered at the time of the investigation.

By Mr. Wolff:

Q. With respect to these records in the Courtroom, Mr. Orr, did you take an inventory of those records just recently?

A. Mr. John Spence and I went through these records Sunday afternoon here in the library.

Q. What records are available with respect to 1941?

A. I didn't see anything there except these books. I believe some of them show 1940 there, but there is no record of invoices showing the cost of this property for any of the years, except 1947 is the main thing they have here in this file. There are a few scattered bills but most all of them are on the year 1947.

Q. Are these approximately the same records that were submitted to you in your investigation?

A. I did not see these records that were presented up here.

Q. Going down on Schedule 7, Mr. Orr, we have the Brasher's property. On your statement this property was cut into lots, Plat Book, page 323.

A. Excuse me, what schedule?

Q. Schedule 7, Brasher's property. How did you allocate the cost of these properties?

A. Which deed and book page are you talking about? I do not have the name listed by—

Q. See the name Brasher in the line underneath this property that was cut into lots, Plat Book 16. Did you obtain that plat from the public records?

A. Yes, we have a photostat of the property that was acquired and also have work papers where John Spence and I rode around with Mr. Anderson to try to identify the tract of land that was sold to various people.

Q. You have a certified copy of the plat?

A. We do have. It is certified on the back, I believe. The paper attached to it is the working papers that were prepared by John Spence and myself in the presence of Mr. Anderson where we were trying to mark off the land that was sold. Now there is attached to some of these warranty deeds, over there is a plat showing a picture section of the land that was

cut out, but there is not a plat that we could locate that would show a complete breakdown. They were individual.

Q. The individual tracts purchased by Mr. Anderson?

A. Sold by Mr. Anderson. We would have a whole tract purchased by Mr. Anderson, but when he sold it he did not cut it up in lots in Akin County like he did in Augusta. He did mark it off and made individual plats of the sales, and that is where we had to try to figure out on our working papers which are attached to the certified copy showing the location of the particular tract of land. There is where Mr. Anderson came and worked with us in riding around in the car.

Q. You mentioned some property that was platted by Mr. Anderson himself.

A. Which ones were they?

Q. I mean that were subdivided.

A. They were either—

Mr. Cushman:

He does not mean that, he means platted.

The Witness:

I say there were records in Richmond County showing that he acquired some property on the outside of Sand Bar Ferry Road of which we have a certified copy of the deed record showing he bought it. We also have certified copies of plats that were dividing this property up, and then we have working papers.

Q. Who had those plats recorded in Richmond County?

A. Well, they have L. T. Anderson's name on them. I assume he did. In all the sales that he made, the sales refer back to plat book such and such thing or part of such and such tract that he acquired.

Mr. Cushman:

I wonder if Government counsel and the witness would mind speaking up so we can hear them.

Mr. Wolff:

I am just trying to get the exhibit arranged, Your Honor, and I don't know that it would be necessary to put our little discussions back and forth in the record here. I am not trying to get any testimony.

Mr. Cushman:

Certainly we don't want to seem unreasonable, but we think we should be able to hear it.

The Court:

I think that is proper, but I don't think that should be on the record, their discussion as they try to find the exhibit.

Mr. Cushman:

Okay.

By Mr. Wolff:

Q. I show you, Mr. Orr, the certified copy of the plat headed "Southwest Side, Riverside Park Subdivision," and also two plats being in the same property, the work papers that are attached thereto. That is what you described as you went over it with Mr. Anderson and discussed the ownership of the property with him?

A. The certified copy that you have from the Court records shows that he acquired property on the south side of Sand Bar Ferry Road. Also here is January 2, 1946, a plat recorded in Book 15-X, page 314, for the certified copy which shows the property has been cut up into streets and lots and they have been numbered. The row across next Sand Bar Ferry Road is listed A through M, the lots back of that facing Orange Street are numbered in numerical order 1 through 24. And there is another plat somewhere in the file that brings in Colorado and right back of Orange Street.

Q. On this plat that you have though, the work papers that were discussed with Mr. Anderson, you inserted in there the name of the purchaser.

A. These work papers are in agreement with the warranty deeds and the security deed in Richmond County. I don't have all the names listed in the work papers. I have keys which will show in our work papers, though, exactly to whom it was sold.

Mr. Wolff:

I would like to introduce, Your Honor, as Respondent's Exhibit HH the certified copy of the plat from Richmond County of one plat, and also the work paper attached thereto of the agent who has described how the work paper was prepared.

Mr. Cushman:

We have no objection to this, Your Honor. It is a certified copy of the records.

The Court:

It will be received.

Mr. Cushman:

But this one, we have the witness here. Let him testify. Frankly, I find these things incomprehensible. He has certain keys he discussed with certain people and he has certain keys which would enable him to—

The Court:

What is the purpose of putting this exhibit in?

Mr. Wolff:

Just to show the time the agent spent in preparing this case.

The Court:

I feel that is not necessary. It is obvious that much time has been spent by all parties on this case. Unless you want to prove something by this exhibit, I think it would be well not to receive it.

Mr. Wolff:

I will withdraw at this time the work papers and leave in evidence as Respondent's Exhibit HH the certified copy obtained from Richmond County.

The Court:

It will be received in evidence.

(Respondent's Exhibit HH marked for identification and received in evidence.)

By Mr. Wolff:

Q. With respect to the property that was not platted, Mr. Orr, how did you go about dividing the property; for example, the Brasher property?

A. The warranty deed referred to a plat showing the tract of land which was sold, but this individual tract was not shown on the over-all tract. So therefore we had to take the plat where he acquired the property and ride down this highway and see exactly which tract he applied and try to mark off on work papers the same tract of land that was described in the deed and also recorded in the plat books over in Akin County. The working papers attached to these working copies will show the names of the people and the way it was located on this particular tract.

Q. Did you do this in discussions and riding around wth Mr. Anderson?

A. Yes, sir, we did; the Akin County part of it, yes, sir.

Q. And how did you allocate the cost of these various properties, Mr. Orr?

Mr. McNatt:

If the Court pleases, we have stipulated these amounts in here. How he allocated it is not important. We have agreed on the allocation.

Mr. Wolff, I did not make any formal objections on the basis it was time-consuming. I would now like to object to any further testimony along this particular line on stipulated items.

The Court:

Are you about through, Mr. Wolff?

Mr. Wolff:

Yes, Your Honor.

By Mr. Wolff:

Q. On Schedule 1, Mr. Orr, with respect to lines L and M, "Houses in Subdivision Not Included Above for Income Tax Returns," where did you get the $18,000 item and the $6,000 item?

A. I have stated before that Mr. Anderson's records were not complete. He did not have accurate records to show when they were built. We had to try to piece together from all sources available. We do know he acquired some property down on the south side of Sand Bar Ferry Road. The plats show it was cut up into lots. His 1942 income tax returns show that he built nine houses there. We discussed this with Mr. Anderson and went along with him that these nine houses were built in 1942. He had some correspondence that later came in and bank statements showing he was in the construction business in 1942 and 1943. And we carried those houses along there until they were sold. Now the $6,000 was added in 1943—

Q. Just a minute. On the $18,000, did that carry through on his income tax return for all of the years that you have him here, 1942, 1943, 1944, and 1945?

A. I believe that is correct. I would have to check, but I think that is correct. I believe that is correct, that they were shown on his tax returns.

Q. I show you the 1943 income tax return and the depreciation schedule appearing at the bottom thereof, the $18,000 item, the very last item.

A. It does show on down here.

Q. I show you the 1943 income tax return of Mr. Anderson, the third item from the bottom, Sand Bar Ferry Road, paren 9.

A. That is it. And then the $6,000 is also shown on this same return if you go through. And I think on the statement you show that they were just $6,000.

Q. In the 1944 income tax return I show you the depreciation schedule—

Mr. McNatt:

I believe the documents speak for themselves. that can be fully covered on brief.

By Mr. Wolff:

Q. They are all on the tax returns, is that not so?

A. They are.

Q. With respect to the following lines on the net worth statement, lines N and O, "Construction in Progress—Per Financial Statement," in 1946 you have $48,000. Would you explain where that item came from?

A. This $48,000 is part of the continuation of those same houses. Now on Schedule 9—

Q. You say continuation of the same houses?

A. Part of the $18,000 and $6,000, which makes $24,000.

Q. Lines L and M.

A. Schedule 9 of the net worth statement, which shows real estate recorded in Richmond County, will show the dates of this property on Sand Bar Ferry Road, when it was sold. It was $18,000 and $6,000, which was $24,000. That shows the cost on these tax returns. Now up to the end of 1946, three of those houses had been sold, which would leave $18,000 on hand at the end of 1946.

Now we discussed with Mr. Anderson as to what the cost of these other houses facing on Orange Street would actually cost. Well, his records do not

show each individual house. He does have a financial statement there that lists twelve houses under construction that he submitted, and he has various amounts shown on that financial statement in there.

Now we determined with Mr. Anderson that the cost would be approximately $4,000 on each one of those houses when they were completed. But the question was, those twelve houses, how much was completed at the end of 1946? Was it half, three-fourths, or what was the amount? And we did add $30,000 in there as cost of the houses not completed or in progress at the end of 1946, which makes it $48,000.

Over in the next year where we show the $12,000, he had sold some more of those houses on Sand Bar Ferry Road and just left two of them which were $4,000. And then there was some construction also with the tax return—I mean the tax records recorded down in Richmond County show he was selling property at the first of the following year, so he had to have this property on hand in order to sell it in 1947.

Q. The $12,000 in 1947?

A. Yes, that is right. Well, the way we arrived at that, there were still two of those houses on Sand Bar Ferry Road for $4,000 and then there was some other construction in process that he sold in the early part of 1948. That brought up the question of how near completion they were. From the best evidence available from his financial statements, from discussion with him and everything else, we arrived at at least $48,000 or a note of $12,000 was involved.

Q. Mr. Anderson was satisfied with those figures at the time, was he not?

A. He was to the extent he didn't raise any objection to it when we asked him about whether or not this was the amount, and he went along with it.

Q. With respect to the beginning net worth in 1941 and the closing net worth in 1948, what effect did these particular lines L, M, N, and O have upon Mr. Anderson's net worth?

A. It would not make any difference at all if you would drop it out entirely and tax him on the year the security deeds would appear. It would make one year higher than it really should. We know anybody in the construction business, they could not build all these houses in the same year with as few people as he had working for him, so we know it possibly was spreading over the years here. So it would not make any material difference though in that except it would show it in the year which it did not belong. The opening and closing net worths were not affected with those particular houses.

Q. With respect to line P, "Investment in Securities, Stocks and Bonds," Mr. Orr, how did you get those figures?

A. Those figures came from a combination of the two inventories of the safety deposit boxes and the safe in his home, checking the broker's records, and discussion with Mr. Anderson.

Q. I refer you over to Schedule 9, Mr. Orr, to the last item on the bottom of Schedule 9 on the second page, the Clements-Gibson property, $5,700. Would you explain that item, please, in 1947?

A. This was a piece of property Mr. Anderson had acquired back in 1942 and Mr. Anderson sold it to Clements and Gibson in the early part of 1947 for $10,000 and consideration, which the stamp shows $6.60. Mr. Anderson received a security deed and a

note from these people for $5,700 which is of record. Then later Mr. Clements deeded this property back to Mr. Anderson, and it is assumed that he gave him back the amount of $5,700. That is what he took it back in, $5,700.

Q. And on this 402 Sand Bar Ferry Road, what happened to that property?

A. It was sold in 1948 to Mr. Barr, as I believe the records show, for $6,000. The consideration stamp shows $6.60. I assume he sold it for $6,000.

Q. Now when Mr. Anderson took this property at 402 Sand Bar Ferry Road from Mr. Clements, was there another security deed given to Mr. Anderson by Clements and Gibson at that time?

A. The record shows they bought another piece of property down on Orange Street.

Q. That is on Schedule 3, is it not?

A. That is right, it is listed Clements-Gibson, I believe 398 south side of Orange Street.

Q. Mr. Orr, how long did your investigation take?

A. Well, I said before John Ward and I worked about a couple of days in June of 1947 and it was put off to try to give the taxpayer time to get his records. We went back into the case and finally had to do something with it in about January 9, 1950, I believe it was, and completed about the 20th of February.

Q. That was just between January and February 20?

A. Yes, and I will say we worked a lot at night and on weekends, too.

Q. With respect to security deeds, did you contact the individuals involved?

A. We contacted as many as we could. Now our working papers will show the people we contacted

the day, hour, and everything else in connection with them, particularly over in Akin County, and the other counties, too.

Q. Why did you contact them?

A. We were trying to be for sure the account was still active and they had not paid any advance payments to amount to anything. For example, see, we contacted Mr. Cauley at a certain date in 1950 at nine p.m., and Mr. Cauley stated he was still paying and was current. There are numerous others here that we can give for that.

Q. With respect to the liabilities on the net worth schedule, lines Q, R,—

The Court:

Can we have a recess now? Is this a good point now?

Mr. Wolff:

Yes, Your Honor.

The Court:

Let us recess for about ten minutes.

(Whereupon, a short recess was taken.)

By Mr. Wolff:

Q. Mr. Orr, with respect to lines Q, R, S, and T on the net worth sheet, No. 1 of Exhibit A, they are the notes payable. I assume they were the amounts required in the same manner as cash in lines A and B.

A. Q and R came from the bank records, and the other notes payable I believe came from the security deeds.

Q. And with respect to the reserve for depreciation, how was that determined and the life determined? How was the life determined?

A. By looking at the houses and by experience with checking other people renting property, we determined on most of those frame houses—

Mr. McNatt:

I do not think he is qualified as an expert in the quality of houses.

The Court:

Of course he is asking him how he did it in explanation of this exhibit, I believe, Mr. McNatt. He is not testifying as to what the depreciation actually was.

By Mr. Wolff:

Q. With respect to the Item Z, "Personal Withdrawals," Mr. Orr, how did you determine those items?

A. This was a general discussion with the taxpayer and notice of the condition of the expenses in and around Augusta at that time for a family of his size.

Q. Did you discuss with him specifically the amounts here?

A. Yes, there was discussion at that time as to whether or not he spent that much. At the same time there was the question of other people, that his family was spending a considerable bit more. We used a very conservative figure.

Q. The Item AA, "Non-Taxable Income Sales and Securities," how was that computed?

A. That was computed from information that we could gather up from the broker's records and also from Mr. Anderson.

Q. Does that include Schedule No. 17?

A. That is correct.

Q. Did the Schedule No. 17, would you explain that a little bit as to just how—for example, take the last item, Southwestern Railroad, and tell me how that was determined.

A. We determined that the cost was $1,950 back in May 27, 1946, and it was sold in 1947 for $1,300 and was a loss of $650 held over six months. And we determined $325 was the amount that would be added back to income because—

Q. With respect to lines A-B and A-C, will you explain those items, please?

A. These are part of the years the taxpayer used what is known as the long form or itemized deductions, and these are deductions that would be on his return if he did use an itemization of his deductions. Most other years I think you find he used standard deductions for part of those years.

Mr. Wolff:

No further questions, Your Honor.

Cross Examination.

By Mr. Cushman:

Q. Mr. Orr, now that you have been here in Court for several days, how do you feel about your estimate of Mr. Anderson's living expenses?

A. I feel that we made a fair estimate. You are considering the place where Mr. Anderson lived, knowing that he had a girl that was in school, and he had other personal expenditures. He said he went to church and gave these contributions here. He must have gone out some, so if he did go out to

these places he would have dressed like other people would. And knowing the cost of food in Augusta, because I was stationed there at that time, I personally think that we were very reasonable in the amounts shown here.

Q. Knowing that he had a girl in school. You heard his testimony with reference to how his daughter went to college, didn't you, sir?

A. Well, we asked him about those things and we were not able to substantiate where the money came from. A part of one of those deeds he wanted to show his daughter was listed in his name, and he said later he was entitled to transfer some of this stuff over to them. Well, it is possible some of them were transferred that came out of his assets.

Q. You heard his testimony with reference to his daughter's working and going to college. I assume he told you that in the course of the investigation, didn't he?

A. That I do not remember for sure whether it was brought out.

Q. If he had told you, you would have made an effort to verify it?

A. Some of that stuff you cannot verify if it is not of record.

Q. My question was, If he had told you that, you would have made an attempt to verify it, wouldn't you?

A. We tried to do everything possible to determine the correct tax on this thing. We were not trying to decide for or against Mr. Anderson in this investigation.

Q. My question was, If he had told you that his daughter worked and paid her way through college, you would have tried to verify that?

A. We discussed with Mr. Anderson all these things and examined all information available to us at the time.

Q. My question was, If he told you his daughter was employed and paid her way through college, you would have tried to verify that, wouldn't you, sir?

A. If possible, but even if we eliminate the daughter entirely, I think you will find the average cost of living for a person in and around Augusta during 1948 was more than $3,000.

Q. My question was, That if he had told you his daughter was working, you would have attempted to verify it, wouldn't you, sir?

A. If she was working, I don't remember that discussion that she was working.

Q. Would you have attempted to verify it if he had told you?

A. If I had any way, yes.

Q. Could you not have verified the employment?

A. Well, look. I would answer that back by this: If we were to run down every little detail, we never would be able to complete it.

Q. And that generally is the way you conduct these net worth statements, isn't it?

A. No, sir. We try to determine the correct net worth of the taxpayer.

Q. Where in your mind does something cease to be big and become small?

A. I think the responsibility lies on the taxpayer. We asked the taxpayer to get us this information up, to show us if anything in the net worth was not right. We wanted to know about it.

Q. What warning, if any, did you give the taxpayer that you were agents of the Federal Government and you would recommend him for criminal prosecution?

A. Repeat that, please.

Q. You are familiar with constitutional rights, Mr. Orr, just as I am. What discussion did you have with the taxpayer with reference to his constitutional rights, the right to be advised by counsel, the right to keep his mouth shut, to say or not to say. What did you tell him about that?

A. In 1947, I don't know that we discussed anything before the special agent got into the case.

Q. My question, sir, was What discussion did you have with the man regarding his constitutional rights?

A. On the first contact in the office when Mr. Anderson said he did not have records to substantiate and he might need help, I told him then if he felt he needed help to feel free to get anybody in the United States to represent him.

Q. That was on the first occasion?

A. Yes, sir.

Q. Did you tell him that he was under no obligation to make any statement and that anything which he might say could be used against him?

A. I would not say that I did or did not on that.

Q. What were your normal instructions, what is your normal procedure with making an investigagation?

A. Well, when you first start out on an investigation of this type, you don't know that it is going to lead to prosecution or anything else. You go at it from a normal investigation and—

Q. Is it not a fact that it is your duty as an agent of the Government that when you walk in to make an investigation to inform the taxpayer of his constitutional rights?

A. I don't think it is, sir, if you are just going to make a normal investigation.

Q. And who determines whether or not it is a normal investigation, you or the taxpayer?

A. If I were going to secure an affidavit from the taxpayer that I was going to present for criminal prosecution, then I would warn him of his constitutional rights.

Q. In other words, sir, you would warn a man of his constitutional guarantees if in your opinion it was justified; and if in your opinion you did not see fit to do it, you would not do it, is that your position?

Mr. Wolff:

Objection, Your Honor. That is not what he said. He said if a criminal prosecution was possibly pending he would advise him. Now what else can you get out of that except argue with the witness a little more?

Mr. Cushman:

Is that in answer to the question?

Mr. Wolff:

Incidentally, there has been nothing said about criminal prosecution in this case on direct examination. This is the first time it has ever been mentioned in this proceeding.

The Court:

That is right. There has been no information that there has been or would be a criminal investigation. I think it is perfectly proper to ask him whether he did say anything to the taxpayer. What is the pending question?

(The pending question was read by the reporter.)

The Court:
Answer the question.

The Witness:
I didn't quite get that first part of the question. Would you mind asking me one more time?

(The pending question was reread by the reporter.)

The Witness:
I think I would answer that question, if we were making an investigation there for prosecution and we were going to introduce that as evidence in the prosecution, I would warn him of his constitutional rights.

By Mr. Cushman:
Q. In other words, you would make an investigation, go through it with the taxpayer, look at all of his books and records, and after you got through with that if you decided to recommend his case for prosecution in the criminal Courts, then you would tell him about his constitutional rights?
A. My experience has been that you can usually tell—
Q. Just answer my question. Have I stated the facts or have I not?
A. What was the question again, please?

The Court:
Read the question, please.

(The question was read by the reporter.)

The Witness:
I think I would answer that, to say we did not force the taxpayer to give us any records; it was strictly on a voluntary basis. If we asked him a question he wants to answer, okay.

By Mr. Cushman:

Q. What are your instructions with reference to warning people of their constitutional rights?

A. If we are going to recommend prosecution, we usually warn him. We do warn him.

Q. "We don't always; we just usually"?

A. If we are going to prosecution.

Q. When do you do that?

A. When I am securing the information that would be used there.

Q. Is it not a fact that when you walk in to make an investigation you are to inform a taxpayer of his constitutional rights and that he does not have to say anything, and anything which he might say can be used against him?

A. I don't think that is exactly true, Mr. Cushman.

Q. And your attitude that that is not exactly true has characterized this entire investigation, has it not?

A. No, sir. My investigation was conducted trying to determine from the best records available, the assets that belonged to Mr. Anderson, and to try to determine his correct tax liability.

Q. Did you not, in fact, recommend him for criminal prosecution?

A. The year 1947 was recommended in connection with failure to file a return.

Q. And what warning did you give Mr. Anderson with reference to his rights in that year?

A. That I do not remember.

The Court:

Now I am afraid we are getting pretty far off now because we have not got the criminal aspect here; it has not been mentioned at all, Mr. Cushman.

Mr. Cushman:

That is correct. My sole purpose is to go into the methods employed by the witness in his investigation. I think Your Honor is well aware of the fact that he owes the public an obligation to warn them of their constitutional rights. And when constitutional guarantees are violated and violated deliberately, I establish here that that, sir, colored the investigation and the Court should know it. However, I will not pursue the subject further, I will go to something else.

By Mr. Cushman:

Q. One last question. It is a fact, is it not, Mr. Orr, that your own department declined to prosecute Mr. Andersen for his 1947 return?

Mr. Wolff:

Objection, Your Honor. I want to make sure Mr. Orr knows the answer.

The Court:

I think that that was not gone into in the direct examination. I believe it is beyond the scope of the cross examination.

Mr. Cushman:

All right, sir.

By Mr. Cushman:

Q. Now, Mr. Orr, getting back to these living expenses, you stated that you knew how much it cost to live in Augusta because you lived there.

A. That is right, sir.

Q. Mr. Orr, are you going to testify to this Court that your standard of living and the things you expect to do in life are the same as Mr. Anderson's?

A. Not necessarily, because my expenses were considerably more than that.

Q. All right, sir. You stated that Mr. Anderson must have gone out to these places and it must have cost him so and so. What is the basis for "he must have gone out to these places"?

A. Well, in the first place, he had on clothing when we saw him.

Q. We are going to get to clothes in a minute. I want you to explain your statement which you just made to me that "he must have gone out to these places and it must have cost him money." I want to know, sir, the factual basis of that conclusion on your part.

A. We discussed the living expenses in general with Mr. Anderson and reduced it down considerably to what we normally put in a net worth case for a family of his size.

Q. Mr. Orr, you made the statement that "he must have gone out to these places and it must have cost him something." I want to know what is the factual basis for which you made that statement.

A. In order to have the necessities of life, he would have to go or send someone.

Q. In other words, what you have reference to when you say "he must have gone out to these places," you are talking about grocery stores and clothing stores?

A. Everything in general.

Q. What was the factual basis for assuming that Mr. Anderson went to places of amusement, theaters, or anything else?

A. We discussed with him some on that, and his contribution that he shows on his return.

Q. And about how much did that contribution amount to, Mr. Orr?

A. He shows in 1941, $197; 1942, $200; 1943, $190. And then allowed to standard deduction, which give him more than the amount he was claiming for those contributions.

Q. One hundred ninety dollars in contributions to everything in what year?

A. 1943.

Q. Back in 1943. I say, sir, did you make any effort to find out whether he raised a portion of the food he ate?

A. We had no way to find it out because we made the investigation in 1950, and the investigation covered the years 1941 through 1948.

Q. Then if you had no way of finding out whether or not he raised a portion of the food that he ate, why did you put something in there for living expenses?

A. Because it takes something for a person to live on.

Q. That is correct, sir. And what you put in there was what Mr. Orr thought ought to go in there?

A. No, sir. If I put in there what it would take for the normal person for a family of his size, it would have been two or three times this amount.

Q. You are not going to stand here and tell this Court that Mr. Anderson is a normal person?

A. Normal in what way?

Q. Normal in the way that you use the word, sir.

A. That I do not know.

Q. You still maintain after knowing Mr. Anderson for years, seeing his home, seeing the way he lived,

hearing the testimony here on the stand—after seeing and knowing and hearing it all, is it still your opinion that the estimate of living expenses is fair?

A. Yes, sir.

Q. You are going to stand back of that report to the best of your ability?

A. If I made an error in it, I would be happy to correct it. I told that to Mr. Anderson all this time. We have asked him to show where we made errors and we would correct it at any time.

Q. All right, sir. Now did Mr. Anderson have in his possession, or is it indicated anywhere on your report that Mr. Anderson possessed securities, the income from which was non-taxable?

A. I will answer to that by saying on Schedule 11, which I believe is the security, about four items, that it is possible that brings up the question of tax exempt interest. All of them except one was sold before we were there. And the inventory which was taken by Mr. Ward in 1947, a question was brought up and I can show you on here that they—

Q. What effect, sir, where is this non-taxable income interest which you know the man received?

A. We don't know when he received it, sir. We asked him to get amounts on the coupons clipped and when.

Q. You knew that he owned the bonds?

A. There was one at the end of the year 1948. The others were sold in earlier years.

Q. Did you attempt to give any effect at all to the taxable interest Mr. Anderson received?

A. I believe you will find that there was some of these coupons still attached therein. We were not sure when these coupons were clipped and we asked him to get records when these coupons were clipped. And

we would have given credit because it is a small item.

Q. It is one of those details, it is small, right?

A. I don't think it would affect the tax but a few cents, and we asked him to get the record to show when they were clipped and we never did get it. So the only thing we could do—

Q. If it would only affect the tax a few cents, you left it out?

A. No, sir; because we were not able to determine when the coupons were clipped.

Q. You were able to determine everything else to add up to a $148,000 tax bill, but you were not able to find out when the coupons were clipped?

A. The information was not furnished to show that.

Q. And is it not also a fact that half of the information that was furnished you, you rejected as being incredible?

A. No, sir, it is not.

Q. Well, we will see about that now.

Now, Mr. Orr, I will ask that you direct your attention, please, to Exhibit A, Schedule 1, with particular reference to the cash on hand as of 12-31-43. I believe that your records, that your schedule there shows that Mr. Anderson had cash on hand of approximately $540, cash in bank.

A. Yes, sir, cash in the bank.

Q. Were you provided with copies of Mr. Anderson's financial statements which he made to the bank over the years?

A. We were a part of them.

Q. I believe, sir, that the Government came here and produced a witness which in turn brought the financial statements which Mr. Anderson had made to the bank, isn't that correct?

A. I say I have parts of them. I am not going to say I have all of them; I am not sure.

Q. Did you have access to the bank statements made as of January 1, 1944, with reference to Mr. Anderson's financial condition as of 12-31-43?

A. Who was that addressed to, please?

(A document was handed to the witness.)

Mr. Cushman:

Please note in the record that the witness is being handed Respondent's Exhibit J with particular reference to the finarcial statements included thereon dated January 1, 1944.

Mr. Wolff:

State also the sheet of the exhibit that that is.

Mr. Cushman:

I do not think the sheet is numbered.

Mr. Wolff:

Count the sheets so we will know.

Mr. Cushman:

All right, sir. That would be the fifth sheet from the top.

The Witness:

I don't see that one in here. It may be, but in the photostats that we have I may have overlooked it but I don't—

Mr. Cushman:

You do not have the one for 1944?

Mr. Wolff:

I would like to explain as to what the difficulty here is. The photostats that Mr. Orr had during the investigation were financial statements obtained from Mr. Anderson, and the Exhibit J which Mr. Cushman is referring to is financial statements which were brought in by the bank and presented at the hearing. They were not available to Mr. Orr at the time of the investigation. I think that is where the difficulty is.

Mr. Cushman:

If Your Honor please, that is the place where the difficulty is.

The Court:

Did these statements given by Mr. Anderson to the Government agent purport to be the copies of the statements that were later brought in here and made exhibits?

Mr. Wolff:

Yes, Your Honor.

Mr. Cushman:

Yes, sir. And also the Government had them available from the bank, sir. The bank had the originals. The Government had them available.

By Mr. Cushman:

Q. Mr. Orr, I hand you a portion of Petitioner's Exhibit No. 33 which relates to the year 1943, the year 1943 being written on the top thereof in red pencil, and ask you if you have a photostat of this. It will serve just as well if you have that, sir.

A. We do not have the top part of this, what it shows, the list of the assets and things.

Q. All right, sir. For your information I hand you, Mr. Orr, a Sheet 5 of Government's Exhibit J, which is the financial statement introduced here as having been submitted to the bank. Referring to your net worth computation, Schedule A, with reference to the year 1942, how much cash does your statement give Mr. Anderson as having of 12-31-43?

A. We just had the bank balances.

Q. The question was—

A. $3796(?) in the C & S and $3510(?).

Q. A total of approximately $540?

A. A little more than that.

Q. I now hand you Government Exhibit A and ask you please to indicate how much cash is shown thereon by Mr. Anderson as having on hand 12/31/43.

A. He said cash in the bank $540, cash on hand $822.25.

Q. All right, sir. Where in your revenue agent's report is it shown Mr. Anderson had that $800 in cash?

A. We inventoried his safety deposit boxes and found sizeable cash at each one of the places, home and in the banks and everything and we didn't know exactly where to put the money which year so the cash was left out on that part of it, small amount and we left the cash on hand out because he said he had cash on hand the end of each year and said he had cash buried.

Q. I say, sir, you classified that as another small item, the $800?

A. No, sir. I don't think we saw that statement then, have no record of it, could not get it.

Q. Mr. Orr, Mr. Anderson told you he submitted these statements to the bank.

A. The bank was not able to locate these statements. We tried to get them.

Q. When did the bank find them? They are not in the Courtroom.

A. When he got the subpoena, I guess.

Q. It is a fact, is it not, that you put in $540, one item shown in the man's financial statement, and you left out $800, the other item shown in the man's financial statement?

A. No, sir. We used the money that showed up in the year.

Q. The man showed you his records which you asked for?

A. No, sir; he didn't show us that, sir.

Q. Do you deny having seen every one of those records which Mr. Anderson brought here and those records which were submitted to the bank?

A. I will admit we saw the bank's. We have photostats.

Q. And since this trial has been in progress, is it not a fact that you have examined that exhibit which was produced by the Government's own witness via the bank? You have looked them over, haven't you, sir?

A. Not too closely. I have looked through them, glanced through them, yes.

Q. What attempt, if any, did you ever made at any time to make your report conform with respect to cash on hand as of the end of 1943 with Mr. Anderson's statement? There is an $800 discrepancy, and I want to know what you did about it.

A. I can go back and prove to you we had more than that on hand at the end of 1949. We found that,

but he did not know the amount he had at the end of each one year, so we left out the cash item.

Q. He made a statement to the bank which said he had—

A. And he also made a statement on those trying to secure a loan.

Q. That is the Government exhibit, sir. From the time you began this investigation up until this present moment, has any effort been made to account or to modify your report with respect to that $800 discrepancy?

A. We have tried to work up from all sources available and stick strictly to records that were available.

Q. All right, sir. And is it your position that that record which is available to you and which was available to you and which has been available to you, that you have completely ignored that $800?

A. It was not available at the time we made the investigation.

Q. And it has been available to you during the trial, has it not, sir?

A. Well, that shows the figure on there, but there again we have records of other cash in other years and there might be an offset.

Q. Mr. Orr, will you refer to your photostats there and see in how many instances Mr. Anderson showed to you by his records that he had cash on hand and where that cash is reflected in your revenue agent's report?

A. I will take them as we have them listed here. On January 15, 1942, which is for 1941, he shows cash in bank but he does not—and he lists thirty-seven and two hundred but he does not show where it is. Now I do not know whether that is in his own hand or in

another savings account or something we could not find. We tried to find everything we could.

Q. Would you mind repeating that?

A. On January 15, 1942, he showed cash on hand and in the bank, $1,613.27.

Q. You mean January 1, 1942?

A. Well, he has on the statement January 15, 1942.

Q. All right; $1,613.27.

A. Sixteen and thirty-seven dollars and two hundred dollars. And by the thirty-seven dollars and the two hundred dollars there is nothing to explain what it is. It is listed there, but over to the left it does not explain what it is. You might assume that it is cash, but I mean there is no record saying for sure it is.

Q. No record of anything saying for sure by whom?

A. Anyone, I don't think. Cash on hand he shows it to be $1,613.27.

Q. Cash on hand is written therein $1,613.27?

A. Correct, sir; right.

Q. And right below $3,700 were no words?

A. But it is not a ditto.

Q. Just a moment. Answer my question. Right below $3,700 there were no words?

A. Right.

Q. And right below that is the figure $200 and no words?

A. Yes, sir.

Q. And the next item following that is $906?

A. Yes, sir.

Q. And because there were no ditto marks, that did not indicate to you that that would reflect all the man's cash?

A. That I do not know for sure.

Q. And you stated that you inventoried banks and you knew he kept cash in his box. You knew he had cash a long time. That is correct, isn't it, sir?

A. I don't know how long he had the cash. We knew that at the end of the period he had considerable cash but we did not try to take advantage and investigate back in there.

Q. And it is your position that when he made the statement to the bank which did not seem reasonable to you, you simply rejected that $200?

A. We didn't reject anything there. We tried to stick to the facts and—

Q. Where is the $200 reflected, sir?

A. I don't know. It might be in some other assets that we have listed there.

Q. You listed your cash separately?

A. Yes, sir.

Q. And you gave him credit for $1,613?

A. We gave him $1,613.27 plus $37.41.

Q. And what credit, if any, did you give him for the $200?

A. I am not sure that it is cash.

Q. That is the key to it. You are not sure it is cash so you rejected it, didn't you, sir?

A. We didn't reject anything. We tried to get the evidence.

Q. You made the statement you were not sure it was cash so you rejected it, didn't you, sir?

A. I didn't say we rejected it. It may be another asset.

Q. If it had been, you would be able to put your finger on it, wouldn't you, sir?

A. Without going through all the schedules, I would not be able to answer that right now.

Q. All right, sir; we will settle for what we have on that.

All right, Mr. Orr, let's go over here to December 31, 1942. What does your revenue agent's report show with respect to cash in that year?

A. December 31, 1942?

Q. Yes, sir.

A. $37.96.

Q. Now I hand you Government's Exhibit J, Sheet 3 thereon, and ask you to refer to that and tell me what that exhibit shows with reference to cash on hand.

A. Cash on hand, let's see. $130.

Q. On down, sir, there are some more there.

A. Cash in bank, $39.52.

Q. All right. Do those figures tally?

A. They don't agree with the bank statement.

Q. It is a fact, is it not, that Mr. Anderson on January 1, 1943, stated that he had cash on hand of $130 and that is another small item that you rejected, sir?

A. We don't reject these things, Mr. Cushman. We were trying to be consistent and fair to the taxpayer in taxes from evidence available.

Q. You have said that you didn't give the taxpayer any credit for the tax-free interest because he would not produce the records. On these years he did produce the records and you chose to ignore them. What is your position with reference to the taxpayer's records?

A. Mr. Anderson told us at the time that these financial statements were not accurate. They were made, allotted to get loans from a bank. If we had stuck strictly to these, I don't think we would want to accept them as 100 per cent correct. We were trying to use records we could prove and substantiate.

Q. And if he said to the bank he had $130 in 1943, you just did not go along with it?

A. We had the same thing at the end of the year. The man, we know he must have had some cash at the end of each year. The question is whether he had more at the end or the beginning.

Q. Is it a fact that if you do not find this as being deposited in a bank through any of these years, you simply denied that Mr. Anderson had it?

A. Left it be an offset for what we found at the end of the year.

Q. Where is that shown?

A. In your inventories.

Q. What I want to know, where is the offset shown in the revenue agent's report?

A. We left if off. We could have added but we eliminated. We found cash in all these boxes.

Q. And the one place you could have got the information and which eventually you did not go, and you did not put it on your report?

A. We found other things on that statement that were not correct. We could not rely on that statement as being evidence. We went to the records that were available and we offset the cash by the cash that we found on hand at the end of the period which was far in excess of the amounts you are talking about there. We did not put it in because we wanted to be fair to the taxpayer.

Q. You stated you could not rely on these records as being evidence.

A. Accurate.

Q. You said evidence.

A. I meant accurate.

Q. What are your criteria for determining whether a taxpayer's records are accurate or not?

A. Comparing them with the items listed there that I can check, for instance the bank's, and against the public records and the Courthouse records showing real estate that he acquired.

Q. And it is your position that if you cannot find in bank or Courthouse or on public records, it is not accurate?

A. I didn't say that. When you compare those things that are available, comparable, then it brings up discrepancies which—

Q. And when you find discrepancies between the public records and the taxpayer's records, you assume the public records are correct, is that right, sir?

A. We went beyond the public records.

Q. Just answer the question. I want to know where you went when the public records say one thing and the taxpayer's records say another. I want to know what your position is with reference to which is right, sir.

A. We contacted the public records, Mr. Anderson, and also the third party involved. We were not satisfied to settle with one issue. We went beyond that point.

Q. Is it not a fact that anything that you found from Mr. Anderson, you were not satisfied; you went somewhere else to find out?

A. No, sir.

Q. On his living expenses, when the man told you about them you didn't think much of it; you went out and talked to others?

A. Living expenses?

Q. Yes, sir.

A. No, sir.

Q. Didn't you talk to others?

A. I don't think so.

Q. You don't recall making the statement that he spent a lot of time going places and it must have cost him money in reference to testimony in regard to living expenses?

A. No, sir, I was comparing Mr. Anderson's family with other people.

Q. All right, sir. There is no point in pursuing that any further. Anyway, the record speaks for itself.

Let's go to the year—oh, never mind. We have already talked about that.

Mr. Orr, to summarize this, there is no question, is there, that your Exhibit A does not reflect all of the assets that the taxpayer claimed he had at various and sundry times?

A. The only thing to my knowledge which it does not reflect would be the cash of which we found considerably more than found on those statements at the end of the years. And we did not add that because we wanted to be fair. We eliminated it for each of the years in question because we did not have an accurate record to show.

Q. It is your position, sir, that there you wanted him to pinpoint accurately with reference to certain things; but when you come to a man at the end of a period some six or seven years later and you found he has that, that the fair thing to do is leave out all of the other money in all of the other years?

A. I think consideration should be given across the board. If you added in one place, if you eliminate, you have to eliminate across the board.

Q. You had these records, sir?

A. Yes, sir, with all amounts forward to the period.

Q. I am glad that I understand that you maintain an $800 item is a small amount. I have been trying to find out what you think is a small amount,

A. Came forward to what he had on hand at the end of the period, yes, sir; this inventory year.

Q. Yes, sir. Just a moment.

Now, Mr. Orr, I believe you went down and examined Mr. Anderson's safety deposit box in the bank and his safe in the house in 1947.

A. Yes, sir.

Q. And when did you make another examination of those places?

A. In February of 1950, I believe it was.

Q. Did you go down and count the money which he had on hand as of December 31, 1948, in his safe or in the box?

A. No, sir, I did not.

Q. Didn't make any effort to do that, that was the end of the period And that is the point of which you testified he had large sums of money on hand, right, sir?

A. I said at the time we made the investigation.

Q. Answer my question. Your testimony was at the end of the period he had large sums of money on hand. That is correct, is it not, sir? That was your testimony, was it not?

A. I say I had large sums reflected in the inventory.

Q. Answer this question: Did you or did you not say the man had large sums of money in hand at the end of the period?

A. At the time we made the investigation and inventoried the safe on June 2, 1947, he had a considerable amount of money.

Q. Actually when you say "at the end of the period", you don't mean the end of the period, you mean in 1947?

A. The inventories were taken in June and February of 1950.

Q. And you don't know what was in the safe as of December 31, 1948, do you, sir?

A. No, sir. I was not at the house.

Q. Then you have stated it was large sums at the end of the period, which is December 31, 1948. You don't know whether that is true or not, do you, sir?

A. If he had it on hand—

Q. Just answer my question. Do you or don't you know whether that is true?

A. I would like to answer and qualify the statement to say if he had it on hand in June 1947, and go back to 1950 you have assets and money on hand, then you must have retained it because it was gold.

Q. We are not talking about gold, we are talking about cash money. Do I understand your position to be if in June 1947 a certain amount of money on hand was the same in 1950 as of a certain amount, cash money, he must have had money at the end of December 31, 1948?

A. I agree it is possible he had money at the end of every year, but the question is how much.

Q. Is it not a fact that you had no basis for the assertion there was a large sum of money on hand as of the end of December 31, 1948?

A. Not in my opinion because the record here speaks for itself. The inventory shows that he had considerably more money.

Q. When was the inventory made?

A. June 1947 and February 1950.

Q. What is the factual basis that there was a large sum of money at the end of the year?

A. Based on the inventory.

Q. Based on your opinion?

A. Based on the inventories which speak for themselves. They were written down in another boy's handwriting, not mine.

Q. An inventory made in 1947 and 1950?

A. Right.

Q. And you think those two inventories are conclusive as to what it was at December 31, 1948?

A. We did not try to tax a man on the money we found.

Q. Mr. Orr, would you just answer my question. It is your position that inventories three years apart are indicative of what cash is on hand during the middle year, December 31, 1948?

A. I would not say that, sir.

Q. Well, I think we understand each other. We won't pursue that question further.

Mr. Orr, directing your attention to Government's Exhibit A, with particular reference to the loans which Mr. Anderson had, outstanding loans receivable outstanding as of 12-31-43, what does your exhibit show, sir, in total round figures? Excuse me, sir; total exact figures.

A. For which period?

Q. What I want to know is, What does Exhibit A have to show with reference to loans receivable by Mr. Anderson as of 12-31-43, total figures?

A. At the end of 1940, $523.56.

Q. I am sorry. What I have reference to is 1943, sir.

A. $413.56.

Q. What does Schedule No. 1 of Exhibit A with reference to the year 1943 show with reference to outstanding loans receivable in Akin County, South Carolina?

A. Security deeds, $4,820.54 in Akin County; Richmond County, $8,774.72; other loans, $413.56.

Q. Now leaving out $413.56, it is a fact, is it not, that those outstanding amounts total $14,008.82?

A. I don't think you could add eighty-two cents because it has a "4" and a "2" at the end.

Q. I am not a mathematician, so you can tell me what it ought to be.

I beg your pardon, sir, I mislead you. What is the total, sir, including the $413.56?

A. Excuse me. Do you have some scratch paper?

Q. Yes, sir.

A. It looks like the total of the three figures that I gave above total $14,008.82.

Q. In other words, your revenue agent's report, Exhibit A, shows Mr. Anderson as having loans receivable accounts of 12-31-43 in the amount of $14,008-.82, sir?

A. Yes, sir.

Q. All right, sir. Now I hand you Government's Exhibit J, with reference to the fifth sheet thereof, and ask you to refer to that, sir, and state out loud for the benefit of the Court how much Mr. Anderson said he had outstanding in mortgage loans as of 12-31-43.

A. He shows loans on real estate, $8,009.26.

Q. In other words, his statement shows about $6,000 less in loans outstanding than your revenue agent's report shows?

A. That is right. We used direct contact with the person who made the deed and also with contact with Mr. Anderson and the public records.

Q. That is another instance, is it not, where there is a disagreement between Mr. Anderson's records and the public records and you have rejected Mr. Anderson's records?

A. No, that is not true. We were trying to get the correct information. When Mr. Anderson stated the statements were not correct, we did not rely on them as being accurate.

Q. It is a fact, is it not, that throughout this entire investigation Mr. Anderson has consistently maintained that some of those loans were owned by his mother? That is true, isn't it?

A. Not the security deeds to my knowledge, until we got up here in Court. That is the first I knew about security deeds being that way. They were regarded in his name and the property was sold in his name. I don't think there was any question about those until we got in Court.

Q. In other words, you so found $14,000 worth of loans on the public records, and in Mr. Anderson's testimony you had a financial statement he only loaned $8,000 and you made no investigation to determine the reasons for a $6,000 discrepancy?

A. Sure we did. We contacted the people that made the security deeds and asked them for the details and asked whether they were paying currently. We certainly made an effort, even worked at night, trying to contact these people.

Q. What were your efforts, sir, with reference to ascertaining the true ownership of the loans?

A. True ownership of the loans?

Q. Yes, sir.

A. Well, the public record which speaks for itself and the statement from Mr. Anderson and also a statement from his mother that she had not given him any money to invest for her.

Q. It is a fact, is it not, sir, that Mr. Anderson throughout this investigation has maintained that he managed his mother's money and his sister's money? Is that not true?

A. To some extent, but they also have a statement that they did not give him any money to invest.

Q. We will come to those statements.

A. All right.

Q. Now, it is your position then, sir, that when the public records say that L. T. Anderson owns a loan of Virginia Whitecotten, regardless of what Mr. Anderson tells you, that then you are justified in assuming from the public records that Mr. Anderson actually owns the loans? That is your position?

A. We asked for records and books to show the other way and never could get it, and we had the statement.

Q. It is a fact, is it not, sir, that you arrived at that figure of $14,000 because that is what the public records show?

A. I repeat, we checked the public records, discussed it with Mr. Anderson and with the people whose name that signed the security deeds, and also statements with the mother and sister.

Q. All right, sir. And it is your conclusion that since the public record showed that Mr. Anderson owned it, then you were justified in assuming that the $14,000 belonged to Mr. Anderson and not $8,000 as he showed in the statement?

A. After considering all of the facts, I would say yes.

Q. Tell me all the facts you considered when you found those stock certificates in Mrs. Faglie's and Mrs. Mary Poole Anderson's name, all the facts why you believed they belonged in Mr. Anderson's net worth.

A. Take one at a time. On Ozzie Faglie we have a statement from her that she did not receive any cash from the father's estate; she had not given her brother any money to invest for her, and that the only thing that she remembered about from this estate that might have been was some county bonds

down at Glasscox County. And we went there and could not find any report of the bonds.

Q. So therefore it should have been obvi is to you as a trained investigator that the witness was confused, should it not, sir?

A. I don't know.

Q. How about when she said she had Glasscox County bonds and there were no county bonds in Glasscox County? What did that indicate to you, Mr. Orr?

A. Well, from talking with her there, she had not given Mr. Anderson anything to invest for her.

Q. That statement that she said she had Glasscox County bonds and there were no Glasscox County bonds, what did that indicate to you with reference to Mrs. Faglie?

A. She stated in that statement she thought there were some county bonds and things, and we pinned her down later where she said there was not because we could not find anything. We went down to check on them.

Q. Is it not a fact that your conclusion was that the dear lady was not telling the truth?

A. No, sir, that is not it.

Q. You did not give her the benefit of the doubt of being confused?

A. I thought she was telling the truth.

Q. Did you conclude that the lady was confused?

A. No, sir, I did not. I thought she was telling the truth, and that is the reason I added these assets to Mr. Anderson, in that she didn't give him her money.

Q. In other words, when she stated she had Glasscox County bonds and you found out she didn't, you then concluded that she was telling the truth and added her stock holdings into Mr. Anderson's financial statement?

A. We have not found any fact to amount to all of this stock that was added to her name.

Q. You mean it is just another detail?

A. No, sir, it is not another detail. The facts speak for themselves. We did not find the sales where he made profits to buy more stock.

Q. In other words, if a person cannot come in and satisfy the Government of every financial transaction it had for twenty-five or thirty years, then they are not entitled to anything, is that your position?

A. No, sir, that is not the way I see it.

Q. For the safety of this country, I certainly hope it is not, sir.

Now let us go into the statement that Mrs. Faglie gave you. "How much money have you given to your brother in cash or otherwise to invest for you?" Answer, "All I gave him is from my father's estate, the year of 1930." Is that what the statement says?

A. That is right. And further down there, we ask her did she receive any money from her father's estate, and she said, "Not that I remember."

Q. All right. Now between those two questions she signed her name. Look on there and see.

A. She signed her name in two places.

Q. After the question I read you Mrs. Faglie signed her name, didn't she?

A. I think what we were doing—

Q. Just answer the question: She signed her name?

A. Yes, sir.

Q. You were not satisfied there and you put another question in there, is that it?

A. During the discussion something else must have come up.

Q. You asked a straight question and got a straight answer, and then you decided something else

must have come up. Did you discuss county warrants with Mrs. Faglie?

A. Yes, sir.

Q. What is a county warrant?

A. A lot of these things were the money, is people advance money to the county to buy and vote on it and had an election or something. I don't know just exactly how they arrive at it except it is money that is put up and people buy it. Sometimes stock companies buy the whole thing and sometimes individuals buy the bonds to let the county operate on. Usually they pay a good rate of interest.

Q. What is the difference between a county warrant and a county bond?

A. That I would rather not explain right now.

Q. You don't know, do you?

A. I have read on it, but right now I would not want to tell the difference under oath.

Q. All right, sir. What efforts did you make to determine how many county warrants this mother and two children received from the father?

A. We went to every source available. We went to examine the Court house records to see the inventories of the estate, and the Courthouse records stated there was not an appraisal of the estate. We checked it with the clerk's records and there was not any record. The only thing we could find of record was the deeds where they divided up the property.

Q. We know that to that extent they were telling the truth, don't we?

A. I thought they were telling the truth all the way through when they signed the statements.

Q. All right. What was the extent and nature of your discussion with reference to these county warrants?

A. We tried to find out what the county warrants were, the amount of them, source of them, in order to try to run them down.

Q. And did you find out very much information about county warrants?

A. Not from her.

Q. From the public records.

A. She thought they were Glasscox and we could not find any.

Q. Wait a minute. Those are Glasscox County bonds, right? Isn't that what she told you?

A. Whatever is in the affidavit I would say is what she said.

Q. You say they were Glasscox County bonds?

A. Whatever is in the affidavit we discussed. And then also we went down, too.

Q. What did you find out from your examination of the public records with reference to county warrants, any county warrants?

A. The public records? I don't believe we found anything. We found through brokerage records where Mr. Anderson bought some in his name. The broker's record shows they were Federal Farm mortgage reacquired back in 1934, and it was sold in 1942.

Q. Mr. Orr, we are not talking about a Federal Farm mortgage, we are talking about the county warrants. There is a distinction.

A. The only thing in here in that connection, I was giving the list of the things we were able to find.

Q. It is a fact, is it not, that there is nothing on the public records to show when county warrants were purchased or sold or issued?

A. Well, I will refer you back to my testimony before when we were inventorying these things and they were asked for dates and amounts on when these coupons were clipped.

Q. No, sir, I am not talking about coupons; I am talking about county warrants. I asked you if you knew the difference between a bond and a warrant, and you said you did not want to answer. I want to know what, if anything, is revealed on the public records with reference to county warrants.

A. Well, the county certainly should know something about it itself, should have a record of it somewhere in some of the offices.

Q. I believe, sir, your testimony was that you made a search and you didn't find anything.

A. That is right, sir.

Q. And where did you make this search?

A. We checked in Louisville.

Q. Where in Louisville? There are also county offices. I want to know what offices you went into.

A. In Glasscox I remember going to the clerk of the Court. This old man had been there practically all his life and he was real old at the time. We asked him about those records and he didn't know.

Q. What records did you ask him about?

A. County bonds, warrants, anything that he knew of that might belong to any of the Anderson's or Faglie's, or did he know of any of the counties that had anything outstanding that were paid off or called in.

Q. You mean to tell me, Mr. Orr, that you went down to Glasscox and got some aged fellow there—

A. Who was a clerk of the Court.

Q. —and asked him for information on Glasscox County bonds and warrants owned by someone from Wrens, Georgia?

A. It is not but a very short distance.

Q. How far? I want to know how far it was.

A. Just less than twenty miles.

Q. And you went down to the clerk of the Court and asked him if any of the Anderson family had ever owned any county bonds or any county warrants for what years?

A. For any of the years outstanding, whether or not they were outstanding and paid after 1940 or called back in.

Q. All right, sir. When did you go down and ask the man this?

A. That was sometime in 1947.

Q. You went down and asked the clerk of the Court in 1947 in Glasscox County if the Anderson's, any of them—mother, daughter, or son—owned any county warrants or got any county warrants out of their father's estate during the year 1929. Was that your testimony?

A. I also asked him if he knew—

Q. Just answer the question.

A. I asked him whether or not he knew anything about those stocks and warrants and bonds issued down there and when they were paid off.

Q. Now we are getting somewhere. You asked him if he knew anything about it?

A. That is right. I could not find any entries. We checked in other parts of the Courthouse records.

Q. Who did you check with?

A. Everybody around in the Courthouse, all the other people that were there.

Q. And you asked them, every one, "Do you know anything about bonds and county warrants?" and you came back and said she does not own anything?

A. We could not find any entries of it.

Q. Where did you expect to find the information, Mr. Orr? You have acquired a great familiarity in the course of this case. Where did you expect to find it, what book?

A. Offhand I don't remember the book that is recorded in.

Q. Isn't it true that you did not know where to find it and you went and asked the people and the people told you there were no such records?

Mr. Wolff:

Your Honor, it seems to me that the counsel for the Petitioner has more or less exhausted this particular subject. I don't know what else can be brought out. It seems to me he has gone through the front door and back door and out through the windows and up through the attic.

Mr. Cushman:

Mr. Anderson went through seven hours of examination. I don't intend to put Mr. Orr through that. I certainly don't mean to be offensive, but we do mean to be firm.

By Mr. Cushman:

Q. All right, Mr. Orr, would you answer my last question?

A. Could I have the question again?

(The pending question was read by the reporter.)

Q. All right, would you answer the question?

A. My answer to that is that we asked about Mr. Anderson and all the information that we knew to check with the people concerned with Mr. Anderson, and we could not find anything on it.

Q. In other words, you checked with Mrs. Faglie and she said, "I have Glasscox County bonds," and you went there and asked the clerk and others, "Do

you know anything about county bonds and warrants?" and they said, "No." And you came back and concluded that Mrs. Faglie didn't own any Glasscox County bonds. Isn't that the God's truth as to what happened?

Mr. Wolff:
Your Honor, the man is under oath. I think his oath was that he would "tell the truth, so help me God." I think that is sufficient with respect to that.

Mr. Cushman:
All right, sir.

The Witness:
We tried to determine whether she had any stocks and bonds and warrants and anything else, but we could not find it. We could not find it. Mr. Anderson never did show us what they had.

By Mr. Cushman:
Q. Mr. Anderson never did show you the county warrants from his father's estate which he acquired in 1929?
A. No, sir.
Q. And isn't it a fact that if your life depended on it, you would not know where to go in any Court in the United States, much less in Georgia, to find out how many county warrants were outstanding in 1929?
A. We have checked those, but I don't remember the book that they were recorded in.
Q. Is it not a fact, sir, that the county bonds down in Georgia are just like the cash that this man had around and never collected except at the time they were issued?

A. I think—I am not positive about that.

Q. As a matter of fact, the truth about the thing is you know very little about county bonds in Georgia and less about warrants?

A. I have not had too much experience.

Q. But on the basis of your limited experience, you have concluded that when these taxpayers told you they owned county warrants they were either mistaken or not telling the truth?

A. No, sir. I asked them for evidence to show the year they acquired it and the year it was cashed—

Q. All right.

A. —so I would have some basis to put it on.

Q. And you asked them in 1950?

A. 1947 and 1950.

Q. All right. You asked them in 1947 and 1950, and their father died in 1929, didn't he?

A. Yes, sir.

Q. And how far in between there was that, how many years Mr. Orr?

A. From July 1929 until 1947.

Q. Eighteen years, approximately?

A. Yes, sir.

Q. And you asked them to produce the records of the buying and selling of county warrants eighteen years later?

A. Something to show they had them or where I could go to find then.

Q. In other words, "Give me something other than your word." Isn't that what you said, Mr. Orr?

A. No, sir.

Q. Isn't that what you said, Mr. Orr, "Give me something besides your word"?

A. No, sir, I didn't say that.

Q. You didn't use those words, but your actions proclaimed it, did they not?

A. We were trying to examine the records and determine the correct tax as best we could.

Q. By sources other than the taxpayer's statements.

A. I think you should have considered the statements.

Q. Mr. Orr, how long is a person supposed to keep his records?

A. In determining the cost of an asset, I say until it is disposed of; at least as long as the tax—

Q. Go ahead and finish. You keep it as long as until you dispose of the assets and how much longer, sir?

A. In the normal course of business, I would say he should keep his records at least four years. But if he got assets there, I think he should keep the records at least close to four years. About eight years, I beg your pardon.

Q. No, sir. How long should he keep the assets?

A. He might keep the assets forty or fifty years. I think he should be able to establish his cost when he sells it.

Q. Mr. Orr, is it your position that you think the records ought to be kept four years or until you sell an asset or until you do so and so and so and so? How long after you sell an asset should you keep the record?

A. Income tax returns we usually state is open for four years, five years back on unreported income, and fraud goes on back to 1913.

Q. And it is your position, Mr. Orr, that in a transaction that was made in 1913, you ought to have 1913 records?

A. I didn't say that.

Q. No, sir, you didn't. I am trying to find out your position on keeping the records. You said four years,

five years. What is your position with the keeping of records for assets which have been sold, sir?

Mr. Wolff:

I don't have any objection, Your Honor, but I don't know how many times he wants the witness to answer it. It seems to me it is perfectly clear that the witness stated the assets, in his opinion, should be kept during the life of the asset or until it was disposed of plus about four years. Now what else does he want, I don't know.

Mr. Cushman:

Your Honor, I think throughout the course of this examination the witness has time and time and time again refused to give a correct answer. I think the record clearly shows that. I think when a man demands a production of records eighteen years later that we ought to be allowed to inquire as to how his public records should be kept.

The Court:

I am wondering what the witness's concept of how long income tax records should be kept has to do with it, Mr. Cushman.

Mr. Cushman:

I think, sir, if he had an unreasonable concept regarding the keeping of records, that then, sir, that is most pertinent for this Court to inquire into. After all, the man is charged with fraud and a large part of this is based on what Mr. Orr thinks of Mr. Anderson and what he thinks about a lot of things.

The Court:

You pursue it. It is getting towards lunch time. When you reach an appropriate point soon, I would like to recess for lunch.

Mr. Cushman:

All right, sir.

By Mr. Cushman:

Q. Let's finish up with this record keeping business and go to lunch. What is your idea on how long a public record should be kept?

A. What record?

Q. I am sorry. What is your idea as to how long a record should be kept by a taxpayer? What does the Statute say about it? What does the Code say about it?

A. The Statute is open for a normal amount of adjustment, three years; twenty-five years unreported income going back through. In cases of fraud, go back to 1913.

Q. Where anywhere in the Internal Revenue Code is there a provision as to the length of time records should be kept, sir?

A. I don't remember the exact Code section on that, but the instruction they taught us, they taught us that the time of the Statute was open. We always advised the taxpayer to keep his records to substantiate the cost of any assets sold up until the time of sale plus the time the statute was open.

Q. Is it a fact that nowhere in the Code is there a definite requirement as to keeping the records?

A. I think you have to substantiate your income and expenses and the sales made.

Q. Is there anything in the Code saying anything with reference to the time records should be kept?

A. You have to determine the cost, the cost of the asset. That is one of the—

Q. And your position, sir, is that unless there are records, if a man said, "I bought a Ford automobile for which I paid $600," that is not good enough; you have to have records?

A. I think you have to consider all the facts in the case.

Q. You have to consider in your mind what in your personal judgment that man is saying, isn't that right? Isn't that what you did?

A. No, sir, that is not true.

Q. All right. You did not find anything on the public records about county warrants? That is definite, isn't it, sir?

A. We were not able to find anything.

Q. And you did not find anybody who could tell you anything about county warrants?

A. We didn't find anything other than what was listed on the statement.

Q. And do you deny that the Andersons had county warrants which they inherited from their father?

A. I do not know.

Q. They told you they had them.

A. We could not find when they were cashed.

Q. They told you they had them, didn't they?

A. It is possible they were cashed out prior to the years of investigation.

Q. There is no question that they might have been, but they told you they had them, didn't they?

A. I am not saying they didn't have them.

Q. What are you saying?

A. I am saying they tax them money in the year that showed up, and they did not give him any money during the period to invest for them.

Q. Now just one or two questions. Did you ever ascertain just exactly what a county warrant was? Did you ever see one?

A. Yes, sir, I have seen them in inventorying other people's files.

Q. Is it not a fact that a county warrant is a plain county check drawn on the county in favor of the holder when the county gets the taxes to pay?

A. I believe so.

Q. You believe that is it, sir?

A. Yes, sir.

Q. And is it not a fact, sir, that that form of document would never appear on the public records but would be found in the County Commissioner's and disbursement books?

A. It should be in the accounting office somewhere. Some of the officials of the county should know about it somewhere.

Q. It should be somewhere?

A. That is right, and some of the county officials should know about it. Not all the counties operate alike over Georgia.

Q. What is the basis for your statement that it should be somewhere?

A. If they issue the bonds, certainly there should be a record so they know what interest to pay out in each one to them that buy it.

Q. We are not talking about bonds, we are talking about county warrants. What is your basis for maintaining that a county warrant issued in 1928 or 1929 ought to show up in 1951 or 1952 on somebody's records? Isn't that just your idea of how long books ought to be kept, Mr. Orr?

A. No, sir, that is not my idea. Somebody should have knowledge of it.

Mr. Cushman:

I think it is a convenient time to take the noon recess.

The Court:

We will recess until two o'clock.

(Whereupon, at 12:40 o'clock p.m., a recess was taken until 2:00 o'clock p.m., of the same day.)

After Recess: 2:00 p.m.

Mr. Wolff:

Your Honor, before Mr. Orr resumes the stand, Petitioner's counsel have condescended to place Mr. George C. Baird on the stand who is a witness from out of town. We feel it will only take a few minutes, and he has other commitments. So at this time I request George C. Baird be called.

The Court:

If it is agreeable with all parties, Mr. Baird will take the stand.

Whereupon, GEORGE C. BAIRD, was called as a witness on behalf of the Respondent and, having been duly sworn, testified as follows:

The Clerk:

State your name and address, please.

The Witness:

George C. Baird, Augusta, Georgia.

Direct Examination.

By Mr. Wolff:

Q. What is your occupation, Mr. Baird?

A. I am a certified public accountant in Georgia.

Q. How long have you been so employed or occupied?

A. Since about 1926.

Q. Are you acquainted with Mr. L. T. Anderson?

A. I am acquainted with Mr. Anderson.

Q. When did you first meet Mr Anderson, do you recall?

A. I don't recall. It has been a good many years ago, sir.

Q. Did you ever live next door to Mr. Anderson?

A. I think I did for a while, but it was about—must have been about thirty years ago.

Q. Was it for a short while or a long period of time?

A. I would not think it would be very long.

Q. Were you well acquainted with him?

A. Not very much, not intimately.

Q. Are you the only George Baird in your firm?

A. Yes, sir.

Q. Did you ever go fishing with Mr. Anderson?

A. No.

Q. Did your firm ever have any dealings with Mr. Anderson?

A. Yes. Apparently they made out one return in 1939 for him.

Q. Did you ever state whether or not you ever interviewed Mr. Anderson or discussed with him his tax liability?

A. I could not say for sure, but I think he must have come in and brought some papers or something to make that return. I turned the papers over to my partner at that time who made the return, apparently. I didn' see him make it.

Q. What year was that, for what return?

A. For 1939.

Q. The 1939 return?

A. Yes, sir.

Q. Did your company prepare a detailed audit at that time?

A. No, sir.

Q. Is that the only return you ever prepared for Mr. Anderson?

A. As far as I can tell, yes, sir.

Q. Have you ever been employed in any other fashion by Mr. Anderson?

A. No, sir.

Mr. Wolff:

No further questions, Your Honor.

Mr. Cushman:

No questions, Your Honor.

The Court:

Thank you, Mr. Baird. You are excused.

(Witness excused.)

Whereupon, ROY H. ORR, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross Examination (Resumed.)

By Mr. Cushman:

Q. Mr. Orr, in his opening statement in the trial of this case Mr. Wolff stated the investigation had revealed certain bank accounts which Mr. Anderson had either concealed or not told you about, certain undisclosed bank accounts. What were those bank accounts?

A. About three weeks ago was the first I knew about a savings account. It was by Mr. Anderson and his mother down at the First Federal Savings, I believe it was, in Augusta, Savings Account 5355. And we didn't find this $132 which was a personal bank balance, I believe.

Q. Mr. Anderson told you he had $142, didn't he?

A. No, sir. This was his statement the best I remember and also in this affidavit, was that he had a checking account at the C & S and also in the Georgia Railroad Bank & Trust Company. I think this account of $142.44 was an error because it was closed out in 1941 and—

Q. Is it your position, sir, that Mr. Anderson wilfully concealed from you any bank accounts?

A. I think he should have known of the savings account because he claimed he had not had a savings account in years.

Q. Well, that savings account is in his name and his mother's name, isn't it?

A. Yes, it is in both their names.

Q. And he has testified here that it was her savings account.

A. Well, again during the investigation we come right back to the same thing as to whether or not the security deeds that are of record were his because they were in his name or someone else's with prior money.

Q. Wasn't that savings account, Mr. Orr, disclosed to the Government by Mr. Anderson's representative?

A. The first I knew about it, Mr. Wolff called it to my attention out at the P Street and Seventh Street Building.

Q. You don't know how it was disclosed to the Government?

A. I am not positive.

Q. No question about the fact that the account was there at the time you made your investigation?

A. I must have been because of the cards that they have. The other day I think the lady stated she was one year short of something.

Q. How many banks in Augusta?

A. Oh, Georgia Railroad Bank & Trust Company got a downtown branch and an uptown branch, and then the C & S, and I believe the Old National Exchange Bank. I am not sure whether there are any others.

Q. There is a Realty Savings Bank there.

A. I believe.

Q. And of course the First Federal Savings & Loan Association is there.

A. That is right.

Q. Well, did you go to these places to find out whether Mr. Anderson had any bank accounts?

A. Yes, I think we checked every bank we had any record on.

Q. Checked every bank around?

A. We usually do that on all investigations, but I expect we did check.

Q. It is your position that you either did not check First Federal or you did check?

A. I would not say it was our fault because a lot of times the banker might be able to overlook an account.

Q. Did you check the First Federal?

A. I believe we did.

Q. And the bank account was there?

A. That is right.

Q. I see.

A. I would not say for positive, but I am reasonably sure we would have because—

Q. And if your investigation had been complete there, certainly the bank account would have been disclosed, would it not?

A. It should have been, yes, sir.

Q. And that bank account was not kept in anybody else's name or fictitious or false names—you did not find any of that?

A. The savings account, I don't know how the card was filed, whether it was under his mother's name or his. If they looked for it under his mother's name, that might have been the reason it was overlooked.

Q. Mr. Anderson told you he was accustomed to handling his mother's money.

A. He didn't say he had it invested in a savings account or checking account.

Q. When you went to the First Federal Savings & Loan Association, you didn't ask anything about a savings account which might have been carried in the name of Mary Poole Anderson?

A. In all of them, we asked every place we went.

Q. Then you have no explanation as to why you didn't find the First Federal account?

A. No, sir, I do not.

Q. But you did find when you went to the Georgia Railroad Bank that there was a safe deposit box in all three names?

A. Yes, sir.

Q. Now to what extent did you go in your investigation with reference to having conferences with purchasers of Mr. Anderson's property?

A. What conferences with who?

Q. Purchasers of Mr. Anderson's property; real property, that is.

A. On his purchases?

Q. To what extent did you go in your investigation with reference to having conferences with purchasers of Mr. Anderson's real estate?

A. We used the Courthouse records there to get the dates and page and description of the property and also in plats, and then discussed it with Mr. Anderson.

Q. Did you ever go out and talk with any of the mortgagors of Mr. Anderson's property?

A. Some of them at one or two pieces, they sold back to Mr. Anderson.

Q. Well, the original purchasers which you have listed on your revenue agent's report, did you ever attempt to go out and verify those figures with the people who bought Mr. Anderson's property and gave him security deeds?

A. Where Mr. Anderson gave a security deed to someone else?

Q. The question is—I don't know how to phrase it any clearer.

Judge, is the question confusing?

A. I missed the last part about the security deed.

Q. We know Mr. Anderson sold property.

A. Yes, sir.

Q. We know he took back mortgages.

A. Yes, sir.

Q. To what extent did you go in talking with those people who bought his property and gave it back?

A. I thought you meant when he acquired the property was the reason I was hesitant on the first part.

Q. I can see how you would misunderstand. I want to know what you did with reference to that.

A. We had with us information showing the person to whom it was sold, book, page, date, and amount of security deeds. And over in Akin County, South Carolina, Mr. Anderson pointed out different locations there and we had it marked off on plats, as previously explained. We knew pretty well where the people were located to contact over in Akin County. Most of them in the Sand Bar Ferry Road section were numbered, so we contacted as many as possible on those and asked them were they making payments in compliance with the security deed and were they current?

Q. Did you contact most of them?

A. Let's see. Over in Schedule No. 2, we contacted Corey, contacted Bussing, contacted Shelly, contacted Cook, contacted Haufman, and Mr. Richardson. Do you want the number or each of the names?

Q. I would just like you to answer my question, sir. How many of them did you contact?

A. Let me count the ones that we contacted over in Akin.

Twelve to fourteen of them I would say offhand in Akin County.

Q. You contacted twelve to fourteen in Akin County?

A. Yes, sir.

Q. There were a great many that you did not contact?

A. Some of these early ones there had been paid out prior to the time of investigation and we didn't go to those. The ones that we didn't contact at the beginning period, we just gave them full value on it.

Q. Now how many did you contact in Georgia?

A. There are twenty-five or more, twenty-five or thirty.

Q. Well, would that be the greater portion of them or half of them or less than half? I mean, just give us your best estimate.

A. I would not know without counting them; I would not know for sure.

Q. All right. Did you go down and contact Mr. Lem T. Clements and Ann Gibson?

A. The working papers show that Mr. J. W. Figpen married Ann Gibson and they lived at 216 Sand Bar Ferry Road. They were interviewed at nine thirty p.m.

Q. What about William T. Clements? Did you contact him?

A. This was in connection with that. The property was bought in a joint name there originally, William T. Clements and Ann Gibson.

Q. That is correct. When was that property bought by them?

A. They bought two pieces and sold one back. This particular one that I had reference to was sold on November 25, 1947, according to the security deed.

Q. Was there not an earlier sale to Clements and Gibson in 1947?

A. Back the first part of the year sometime, yes, sir.

Q. When was it? When do your records show?

A. That was July 11, 1947.

Q. It is a fact, is it not, Mr. Orr, that in July of 1947 Clements and Gibson bought a house on Sand Bar Ferry Road from Mr. Anderson?

A. Yes, sir.

Q. And they gave him a security deed back?

A. Yes, sir.

Q. And what was the amount?

A. Fifty-seven hundred dollars.

Q. All right. Then in November of 1947, they bought another house from Mr. Anderson?

A. Well in the meantime, though, the deed records show that the property was deeded back, this particular one down on the south side of Sand Bar Ferry Road was deeded back.

Q That is correct. What was the date of that?

A. November 24, 1947.

Q. And what was the date of the second purchase by Gibson and Clements from Mr. Anderson?

A. I believe it was November 25, I believe, by the date of the security deed.

Q. Well without prolonging this unnecessarily, the deeds and the mortgages, security deeds, they were all within two or three days?

A. They were not too far.

Q. Right close together, November 22 and 25.

A. Yes, sir.

Q. Is it not a fact that the original security deeds taken by Mr. Anderson were canceled?

A. Yes, sir.

Q. And it is also a fact that Gibson and Clements deeded it back to Anderson and the original security deed was canceled?

A. Well the consideration on that deed shows ten dollars; and consideration deeded back and the original stamp when Mr. Anderson sold it to them said ten dollars; and consideration, deed records when it was deeded back to Mr. Anderson, I believe will show the same thing.

Q. All right, sir. The point is, what was the date of the cancellation of the Clements-Gibson mortgage? I mean, do you have that?

A. Not on the work papers available here. Let's see. The records I have here is that it was originally sold by Mr. Anderson to Clements on July 11, 1947; ten dollars and consideration.

Q. And fifty-seven hundred dollars security deed?

A. And the security deed was recorded on July 11, 1947, for fifty-seven hundred dollars. Then in November 24, 1947, they sold the property back to Mr. Anderson.

Q. And what else happened about that time?

A. Excuse me, before I answer that. On November 24, 1947, when Mr. Anderson got this property back, the deed shows ten dollars and consideration, the same as when he sold it to them.

Q. All right, sir.

A. All right.

Q. Now when he got the property back, he canceled the date of the original security deed. Do you have that?

A. We dropped it out.

Q. You dropped it out that year?

A. And then they got the other piece of property, which I believe was on Orange or Colorado Street. I believe it was Orange Street offhand.

Q. And they gave the security deed back on that property?

A. Yes, sir.

Q. What was the amount of that?

A. Forty-seven hundred dollars, I believe, but I can look and see. Forty-seven hundred dollars.

Q. It is a fact, is it not, Mr. Orr, that based on your investigation of the public records and your conversations with Clements and Gibson that is simply an exchange of two pieces of property?

A. No, sir, I don't think it was exactly on that basis. The deed record won't bear it out. There is some question there as to whether it was or not. But the deed record does not show that.

Q. What do you mean "there is some question"? I wish you would elaborate on that, please.

A. Your deed record shows that Mr. Anderson sold it, got a security deed back, and the original amount showed ten dollars and consideration. Then when Mr. Anderson got it back, it showed ten dollars and consideration.

Q. Tht looks like an exchange.

A. It is not necessarily, I don't know. It looks like a complete transaction.

A. Was this not a step by step procedure where they took the security deed for fifty-seven hundred dollars, Mr. Anderson took the deed back and canceled the security deed, gave them a new deed for the new property, and took another security deed back? Is that not the actual sequence of what happened?

A. The record does not exactly indicate that.

Q. Show me.

A. It shows you have a warranty deed, will show that if it is a trade.

Q. Show me, if you will, where the records vary from the recital of the facts as they occurred.

A. I say there were four, five complete different transactions: one where Mr. Anderson sells the property, another transaction where he got the security, and then another when he buys the property. That is three on one piece of property. Another piece of property, he sells the property to these people and he in return received the security deed back.

Q. Let's look at it with reference to dates.

A. All right.

Q. The original deed was July 11, 1947?

A. Correct; yes, sir.

Q. And the security deed from Clements and Gibson was also in July 11, 1947, was it not?

A. I believe that is right.

Q. Then the deed which gave the property back to Mr. Anderson was given when in November of 1947?

A. November 24.

Q. All right, sir. And which deed from Mr. Anderson to Clements and Gibson to the new property was given, I mean in November of 1947?

A. November 25.

Q. The day after?

A. That is right.

Q. All right, sir. When was the security deed, the second security deed, given to Mr. Anderson by Clements and Gibson?

A. Looks like it has the date of November 24.

Q. Then actually the first series—

A. Excuse me, just a minute. You are talking about the second one?

Q. The second security deed which Clements and Gibson gave to Mr. Anderson on the second piece of property.

Mr. Wolff:

Your Honor, I hope you will indulge with the witness. He is looking at about 200 of these transactions.

The Witness:

November 25, 1947.

By Mr. Cushman:

Q. Then the original transactions between Clements-Gibson and Mr. Anderson all occurred on July 11, 1947; and the second series all occurred on November 24 and 25 of 1947, is that correct?

A. I believe that is correct, sir.

Q. Those dates that you have given to us, are those the dates those papers were recorded or are those when the transactions were entered into?

A. It is the date of the deed, I believe, though we can check it off with the security deed here. The deed itslf is dated from the security deed, is from Mrs. Gibson, et al.; William T. Clements, November 25, 1947, to Mr. Anderson.

Q. And it was recorded the same date?

A. Filed for record on December 8, 1947, at 2:40 p.m.

Q. I see, sir.

A. This is the whole thing, the last thing filed for record December 8, 2:40. Recorded December 11, 1947.

Q. So actually what it is, what you are referring to in using these dates, are the dates of the instru-

ments as between the parties and not the dates of recording?

A. It is the date of the security deeds.

Q. There is obviously a discrepancy between the date of the recording and the deeds and the figures you testified to or the dates of the transaction between the parties hemselves?

A. That is right.

Q. That is what I wanted to pin down. That is the date the parties went through with the thing, right?

A. The dates appear on the security deeds or warranty deeds.

Q. All right. Is it your position that that was not an exchange of property?

A. I don't believe it was, sir, because there was a day later in there. It is possible, but there is nothing of record to indicate it was. And he sold the property shortly after, within a few days after, anyway.

Q. You will certainly admit, will you not, Mr. Orr, that all being jammed right up there together it would be a question of whether it would be a sale or exchange of property?

Mr. Wolff:

The legal question whether it was a sale or exchange is beyond the scope of the examination. It seems to me that the witness has testified precisely what happened, given the dates and everything, the legal consequences of what has happened.

Mr. Cushman:

If Your Honor please, he has made a legal decision and put it in his report.

The Court:

After all, I think the revenue agent can say how he did conclude, and it is up to the court to decide on those facts.

Mr. Cushman:

I agree. I am practically through, but I would like to get it completely into the record.

By Mr. Cushman:

Q. You will admit there was some question about whether or not it was a sale or an exchange?

A. There was not a question, the dates clearly indicate. If we had gone down and tried to receive the property on the 25th, we could not have.

Q. That has nothing to do with it. These people entered into a transaction which happened in July on the same day and in November on one day and the day thereafter. What I am trying to get at, in your revenue agent's report Mr. Anderson in that year acquired property to increase his assets. I want to get what went on in your mind when you put in that increase, how you arrived at the fact that $5,700 should be reflected in your report as an increase in assets so as to determine an additional tax liability. That is what I am after.

A. I used the records completely based on contacts with the people as to whether or not they owned the property. I might say here for the record that to the best of my knowledge this is the only one of the pieces of property that was an overlapping period in there like that.

Q. I agree with you. I want to know what conversation, if any, you had with Clements and Gibson to find out whether it was an exchange or sale.

A. Our conversation was just what I read a moment ago, and the rest of the public records speak for themselves as to who owns it, the date acquired, and the cost.

Q. And you then never asked the Gibsons the circumstances which gave rise to them moving off the front street of the project on the street nearer to the back? You never discussed that?

A. I will not say whether I did or not. We could not write all of it down, no.

Q. Isn't it a fact that you want to see the Gibsons and they told you they wanted to exchange houses and that is the way they did it?

A. That is not what the note says.

Q. I didn't ask you what the note said, I asked what the Gibsons said.

A. I am only testifying as to what the note said.

Q. You are going to say what you said with reference to Gibson. You said you asked them all over the place and the one that stands out is an exchange. I want to know what efforts you made to find out as to whether or not that was an exchange.

A. I will have to stand on my testimony as to the dates it was sold and just what the public records speak for and what I said here.

Q. It is a fact, is it not, that if that had been treated as an exchange it would have been more favorable to the taxpayer?

A. Not necessarily. It is possible to have a gain or a loss.

Q. In this particular case, had that been treated as an exchange of similar types of property, would it have been more favorable to the taxpayer or less favorable?

A. I think we treat it fairly.

Q. I didn't ask you that.

A. I am not going to say it was not.

Q. When you were confronted with the decision as to whether or not that was an exchange of property, you decided to take the course of action which was favorable to the taxpayer?

A. No, sir.

Q. You deny that.

A. That is right.

Q. Do you know what the cost of this property was, either the original piece or the piece that was traded?

A. There has never been any record produced to show th actual cost.

Q. I didn't ask you that, I asked you if you knew.

A. That would be my answer, that I am not able to show exactly what the original cost was.

Q. Well, would you say $2,000 would be about right for that property?

A. The property was shown up in this group that was shown up in 1942 at an estimated cost of $2,000. But property from 1942 until 1947 increased, and when he had to buy it back, the same consideration, we discussed here before that if a deed shows ten dollars and consideration it meant that and had stamped that is what it shows on the deed.

Q. Now you have testified the deed showed ten dollars and consideration, and you are very firm about that. But you are not so firm about what the cost of the property was, and that fact was very material. And it is a fact that it was?

A. But to him he had to take back the security deed which was outstanding on the books for $5,700.

Q. Now what do your records show with reference to the deed back to Mr. Anderson for ten dollars and no consideration to the presence or absence of stamps on that deed?

A. There were no stamps involved.

Q. And what does that indicate to you?

A. To me the man assumed the outstanding liability but did not give any cash consideration.

Q. Do you mean a man assumed an outstanding liability that was already owed to him?

A. He exchanged the property back for the property.

Q. We will settle for that. Thank you.

Did you go around—

A. May I answer and say one thing. When you say the exchange, I want to make it clear he was exchanging this outstanding security deed back for the real estate. There is nothing in that deed that has any reference to my knowledge of any other sales coming up.

Q. That is your point, isn't it?

A. I believe we have checked it, and I think your security deeds will show the same thing on the other.

Q. You are never going to admit that that was an exchange of property?

A. I am going to stand on the records as to the date of sales and cost.

Q. Until it comes time to what the individual said?

A. I am going to stick with the records.

Q. And you are going to totally eliminate what the people Clements and Gibson told you about it?

A. I have told you what they told us about it.

Q. I believe that you stated that you went around and had conferences with about every banker in Augusta, didn't you, sir?

A. I believe we contained all of them.

Q. What contact, if any, did you have with the people who rented from Mr. Anderson?

A. People who rented?

Q. Yes.

A. I don't believe we contacted any straight tenants if there was no security deed involved.

Q. You didn't talk with anybody that rented from Mr. Anderson?

A. Right now I don't recall it.

Q. Never made any attempt to find out who he rented to or how much or anything about rental at all?

A. For this reason—

Q. Just answer my question. Did you or did you not try to find out anything about his rents?

A. No, sir, we didn't because if you could not find one you could not make an operating statement on one item.

Q. You didn't try to find out anything about rents, did you?

A. We had determined before the man didn't have books and records to substantiate the cost of expenses, so it would not do us any good to run down the gross receipts of the rents.

Q. Did you or did you not make any attempt to find out from any of his tenants whether or not they were renting from him, how much they paid, how long they had been renting, or anything that had any reference to rental property rented by Mr. Anderson? Just answer my question yes or no. I think you can state a yes or no answer.

A. I don't believe we did, sir.

Q. All right. Now what investigation did you make with reference to the dividend records received by Mr. Anderson either individually or otherwise?

A. It would be the same thing.

Q. What do you mean?

A. Same as the rent. We didn't rent them because we didn't have information that he didn't have cost, and therefore we could not work it on that basis.

Q. Perhaps I confused you. What investigation did you make with reference to the receipt of dividends and the ownership of stock? That is what I am talking about, dividends.

A. I contacted Georgia I know in Atlanta, and we checked with Georgia Railroad Bank & Trust Company to verify the purchase of these things. Now whether our records show the actual dividends received, I don't know.

Q. Did you go to Georgia Railroad and ask them how much they paid L. T. Anderson over a period of years in dividends? You heard the gentleman testify here this morning?

A. Yes, sir.

Q. Did you go to the bank and ask during the course of this investigation?

A. All of these will have to lead back to the reason back of it.

Q. No, sir. I want to know what you did, sir.

Mr. Wolff:

I would like to ask Mr. Orr, if he knows the answer to give him a yes or no, if he possibly can.

The Witness:

To the best of my knowledge we did not.

By Mr. Cushman:

Q. You never made any investigation as to the dividends received by Mr. Anderson?

A Offhand I would think not.

Q. I don't want an offhand answer, I want to know what your working papers show.

The Court:

Are we talking about the years in question?

Mr. Cushman:

Certainly are, sir, the years in question.

The Witness:

I made my answer.

By Mr. Cushman:

Q. Did you make any check of dividends received by Mary Poole Anderson?

A. No, sir, I don't think so.

Q. Did you make any check with Clement A. Evans about either Mr. Anderson or Mary Poole Anderson?

A. I don't think so.

Q. Did you make any investigation with Johnson, Lane & Space Company concerning dividends received by Mr. Anderson or Mary Poole Anderson?

A. I don't believe we did, sir.

Mr. Wolff:

The case itself is based on the net worth basis, it has nothing to do with specific items of income or specific items of expense. Now when it is based on the net worth it is expected in all cases that they run down every item of income and every item of expense, and I don't know it is necessary or appropriate to continue it further in the income.

Mr. Cushman:

I think it is very pertinent for two reasons.

First, the Government is so entitled if they cannot accurately ascertain the income. They have stated they could not do it. I want to find out whether or

not they would have. They have produced themselves the witness which show the dividend income received by Mr. Anderson. They have produced the records to show the dividend income received by Mrs. Anderson. I submit that those records were available to the Government and its agents at the time the investigation was made.

The second reason is even more pertinent; that is, that there is no better indication of the ownership of assets of Ozzie Faglie and Mary Poole Anderson than the fact they received dividend checks. The records produced here by the Government show that, and Mr. Orr admitted that he included in his net worth statements assets that belonged to someone else. I want to show he did not use due diligence in so doing.

The Court:

I think it is proper for you to go along that line of questioning.

Mr. Wolff:

Your Honor, I might state that the records Mr. Cushman is talking about, they could have ascertained the incomes from other people. They were not the records of the taxpayer.

The Court:

I understand that. Maybe Mr. Cushman is going to make an argument. However, that is part of the duty of the Government, to see all other available records where they can use the net worth theory. Although I will not say I concur in that view, but that is your point.

Mr. Cushman:

Yes, sir, that is half of it. The other half is that dividend checks were paid and dividends were disbursed to Mary Poole Anderson. Mr. Orr knew that Mr. Anderson's mother owned them, and yet he included them. I would like to establish the fact that he could have found out had he looked.

Mr. Wolff:

Your Schedule 11 in Exhibit A shows that some of these stocks were in the name of Mary Poole Anderson and some in the name of Ozzie Faglie. If the stocks were in their names, there is no doubt the dividends would have been issued to them and paid to them if they were the stockholders of record.

The Court:

That is something I think we can argue on brief, whether you are correct in your contention. I want to establish the facts as to legal argument.

Mr. Cushman:

The only reason I brought it out was that he did include in the net worth statement stocks which were registered and indicated the ownership to be in Mary Poole Anderson or Ozzie Faglie.

I think we have pursued the question far enough now, but I did want to get that in the record.

By Mr. Cushman:

Q. From what sources as a result of your investigation did you determine that Mr. Anderson received income?

A. Schedule 1 which lists all of the assets at the end of each year and the increase from one year to the other.

Q. No, sir, that was not my question. You investigated very thoroughly and I would like for you to give to the Court, please, the sources from which Mr. Anderson received taxable income as indicated by your investigation.

A. Well, he had the income from interest.

Q. That is right, sir. What else?

A. Rent.

Q. Right.

A. Sale of real estate.

Q. That is right, sir.

A. And of course there have been dividends on stock.

Q. That is correct. Was there not one more source?

A. Salary.

Q. Salary. Did you find he had income from any other sources than that?

A. We did not trace down the individual sources of income, we traced down the assets that were in his name.

Q. Did you find he had income from any sources other than salaries, rents, sales, interest, and dividends?

A. We are not saying that that is all the sources he had, we are saying these are the assets he had in his name at the end of these years.

Mr. Cushman:

Your Honor, I think I am entitled to an answer for a simple question.

The Court:

Read the question.

(The pending question was read by the reporter.)

The Court:

He can answer to that, but he can qualify it, too, if he wants to.

The Witness:

Offhand I don't remember any others right now except to state that we were mainly looking for the assets. After we found out, we were not able to determine the cost of the property in each year and the operating expenses each year and the expenses of the rental property. We found out in the beginning we could not go on the operating statement. Therefore we abandoned the idea of tracing each source of income in to him and the expenses in connection therewith.

By Mr. Cushman:

Q. You say offhand you cannot remember any other sources?

A. No, sir.

Q. And if you had found any, you would have put in notes.

A. There might be some other notes in there, because the report speaks for itself that we submitted.

Q. Now you stated repeatedly, Mr. Orr, that you could not determine the cost of this property.

A. That is right.

Q. Let me ask you this question: How can you prepare an accurate net worth statement if you cannot determine costs?

A. We gave the taxpayer credit for the opening years in most of these cases on this real estate. Then the last years he had either sold all this property except three houses involved, and we picked up the security deed, the principal balance on hand. There-

fore, the beginning and ending period would not affect us by this; it is merely a spread in between the opening and closing.

Q. If you refer to Schedule 1 of Exhibit A with particular reference to the year 1948, you list there assets of real estate in the amount of almost $50,000. Now if you had not known the cost of the property, Mr. Orr, how could you maintain the figures in 1948 were accurate?

A. Well, if you will notice in the beginning of the inventory, it shows more than that.

Q. All right, sir. My question is simply this, sir: If you did not know the cost, how do you know the 1948 figure is accurate?

A. Based on the best information available to us.

Q. And your own determination of that information, sir?

A. No, sir.

Q. You are not going to deny to the Court, sir, that your opinion entered into the preparation of this statement, are you?

A. My personal opinion did not. It was the applying to law what the taxpayer placed on information available to me.

Q. And what raw material did you apply the tax laws to, sir?

A. To the tax and the money on the income he had that was made.

Q. You applied to the raw material the public records?

A. There are a number of things which we have gone over. We have checked the record that he had that we could tie in with it, the public records, the bank records, and discussion with Mr. Anderson, discussion with the people that had the security deeds.

We didn't stop with just one source.

Q. Now can you explain, sir, if the cost was good enough to determine income why it was not good enough to determine specific property?

A. As I said before, the cost and the opening and closing would not really affect the interim years in here. Now we have picked up the security deed principal balances which speak for themselves.

Q. Let us get that "speak for themselves." Didn't you compute the value of those security deeds?

A. Based on the contents in the security deeds.

Q. Is it not a fact that when the security deed shows so much money is payable at such and such a time and there is no division between principal and interest, that a mortgagor has the right to apply to either principal or interest as he sees fit?

A. In most of these cases principal was stated in the security deed and it bears out that monthly payment is so much a month over so many months, and it will be about a third to a half more than what is shown as the principal.

Q. And what conclusion did you draw from that, sir?

A. We had it figured, for example, that if it shows 140 months at $20 a month, a man is going to get $2,800 back out of the monthly payment; and if the security deed calls for $1,000, he is going to make $1,700 interest over this period of time.

Q. That is your conclusion?

A. That is what the record shows and—

Q. That is the fact. And is it not a fact that as a matter of law they had a right to apply those payments, those $20 first, and interest or interest and part interest and part principal? Isn't the choice up to them?

A. It applied both principal and interest.

Q. The example you gave did not spell it out, did it?

A. I say though that the $20 a month which would pay back $2,800 was paying on principal and interest.

Q. Where are your security deeds that you have there in your working papers? Do you mind if I look at them?

A. No, sir.

Q. Now, Mr. Orr, what financial statements do you have in your possession, sir, or photostatic copies thereof, with reference to statements submitted by Mr. Anderson to the bank? What of those statements do you have?

A. I don't have all of them. The ones that were submitted, I have parts of them.

Q. What I want to know, which ones do you have?

A. I have a letter dated January 15, 1942, which must be for 1941. There are five sheets attached to that one.

Q. In other words, you have here a financial statement for December 31, 1941, is that correct, sir?

A. It shows "Made up 1-1-42" so I assume—

Q. All right, sir. Now you have one for 1-1-41. You have one for 12-31-41 dated 1-1-42. Now what do you have for the year 1942?

A. There is one letter and other attachments dated January 11, 1943, consisting of eight pages attached to it.

Q. All right. And in that attachment you have a statement which bears the date January 1, 1943, isn't that right?

A. Yes, sir.

Q. And you would assume, as any reasonable person would, that that was for the year 1942?

A. Yes, sir.

Q. Now we have 1941 and 1942. What do you have for 1943, sir?

A. 1943 is not very complete. It has three pieces, but there is not near as much in detail as the other.

Q. But you do have one for 1943?

A. Showing some loans, but not on all the real estate and everything showing in other assets.

Q. Now let me see here, if you don't mind, please, sir. You are talking about 1943, aren't you, sir?

A. Yes, sir.

Q. All right, sir. Now you stated that what you have in your files with reference to the year 1943 is not nearly so complete as the other statements. Did you go to the bank and try to find the original complete statement which was introduced for the year 1943?

A. We tried to get the statements for all years.

Q. I am asking you about 1943. Did you go to the bank and ask them, "Do you have L. T. Anderson's statement which he submitted for the year 1943?"

A. We asked for all years under investigation.

Q. All right. Let's find out what you have in your files for 1944.

A. I have four sheets of paper. Two of them are letters and two are papers with some figures on.

Q. All right, sir. That is dated January 2, 1945, is it not?

A. Yes, sir.

Q. And we would assume that that is for 1944, would we not, sir?

A. Yes, sir.

Q. I will ask you to compare Government's Exhibit J, the six sheets thereof, and tell me if there is any discrepancy between the original sheet sent to

the bank and the photostatic copy of what you call a figure in there.

A. It is apparently the same but there have been some strike overs and some new figures added since the photostat was made, figures changed in a couple of places.

Q. Well, now, here. Let's take the ink figures there. Let's take that figure there of 113,100.

A. Yes, sir, but it has been changed to 114.

Q. Then the 105,191, that is the same, isn't it?

A. I believe that is 105,091.

Q. Don't you think that is a "1"?

A. It has been changed, I would not say.

Q. What does it look like?

A. It is different from the photostat.

Q. How about the 10,300?

A. There is a difference there because the photostat shows a difference to it.

Q. All right. How about the $10,000 written in here?

A. The $10,000 appear to be the same.

Q. Then $328, there is seventy-four cents difference.

A. There is a difference there, so it is not the same statement altogether.

Q. Would you maintain that is substantial variation or not substantial?

A. I would not say it was not the same statement; it was not the statement.

Q. What you had available. You had available to you substantially the same thing Mr. Anderson stated to the bank for 1944, didn't you, sir?

A. Approximately.

Q. All right. Now what did you have for 1945?

A. We have seven sheets consisting of letters and a few with figures.

Q. You have financial statements from Anderson for the year 1946, is that right, sir?

A. Part of it. I don't know how complete it is with what you have.

Q. What efforts did you make to find out if it was complete?

A. We have not been able to get all these from the banks. That is what I am trying to tell you.

Q. They are now in evidence, are they not?

A. Yes, sir, but the banks must have located them since then.

Q. You went to the bank and asked, didn't you?

A. Yes, sir.

Q. Don't you have that, sir?

A. No, sir, I don't believe that is the tax.

Q. Actually what you have, sir, is the raw material out of which this thing was constructed?

A. I would not say.

Q. In any event, you had a financial statement for the year 1946, is that right?

A. We have some figures here.

Q. But you don't know whether it is financial statement?

A. I don't know if it is complete.

Q. What do you have for 1947?

A. That was 1945.

Q. No, sir, that was 1946 we were just talking about. What do you have for 1947?

A. The one I was reading from was dated January 24, 1946, which must have been for 1945.

Q. What I want to know is, what did you have for 1946?

A. 1946, I have three.

Q. You have a financial statement for the year 1946.

A. Yes, sir.

Q. All right. What do you have for 1947?

A. I don't have anything for 1947.

Q. What efforts did you make to get this statement which was introduced in evidence from the bank?

A. Same thing. We asked them for all years in the investigation in 1950 and tried to get it. John Spence was with me.

Q. You maintain, sir, you had no financial statement to use with reference to the year 1947?

A. According to this report here, I would have to go back through all the files. This is supposed to be all the financial statements.

Q. The question was, did you maintain you had no financial statement to use for the year 1947?

Mr. Wolff:

Mr. Orr, will you answer him whether you have it here.

The Witness:

There are not any here.

Mr. Wolff:

We assume that is all you had at the time of the investigation.

By Mr. Cushman:

Q. Is that correct?

A. Yes, sir.

Q. And what did you have for the year 1948?

A. Not anything in the file.

Q. So we will assume you had no financial statement for the year 1948.

A. Yes, sir.

Q. All right, sir. Then you had none for 1947, you had none for 1948, and one year in there was complete by item? Is that your position with reference to the finncial statements which you had?

A. To the best of my knowledge and belief, that is correct.

Q. Now I would like for you to direct your attention to Schedule 1 of Exhibit A with particular reference to the line which is unnumbered, "Construction in Progress or Finished for Sales Per Principal Financial Statements, $48,000 at the End of 1946." Will you please produce the financial statements from which you obtained that information?

A. I would like to show you my original working papers.

Q. My question was, will you please produce the financial statements from which you obtained those figures?

Q. Do you have the financial statement?

A. I have the 1946, yes, sir.

Q. All right, sir. Now will you please produce the financial statement from which you obtained the figure $1,000 for 1947?

A. That must have been a typographical error on ditto because my working papers did not ditto the financial statement which here speaks for itself.

Q. Mr. Orr, do you mean to tell me that you sent out a deficiency in 1951 and put on that that this source of information is the public records, and now you come up in 1955 and say it was a typographical error?

A. I am saying that was the cost of the houses. I have explained that before and would be happy to explain again.

Q. I want to see the financial statements, Mr. Orr, which you used for the year 1946 and for the year 1947 wherein you further state on Schedule 1, "Fifteen Houses at $4,000 each." Those two lines of figures there, I want to see those financial statements. And I think we have a right to rely upon that fact.

A. I have he one for 1946 which bears it out, and I also have my original working papers in the way it was made. I have them listed separately on these papers as twelve and three.

Q. All right, sir.

A. I can explain the cost, how it got there. We have nothing to hide in connection with it.

Q. I want you to produce the financial statement that you got $12,000 off of for 1947. That is what I want you to produce. Now you said that this is the way you calculated, that is the way you did it. I want to see the statements.

Mr. Wolff:

Your Honor, the witness has stated he has no financial statement for 1947. He has stated that his original work papers show that these figures were not taken off of a financial statement. I do not know what the Petitioner's counsel wants him to say. He said he does not have it.

The Court:

I am inclined to believe that. He says he has no financial statement for that year. He has offered to show where it comes from. He says it is a mistake.

What is the latest question? What is the question pending now?

By Mr. Cushman:

Q. In view of Your Honor's ruling and Your Honor's statements there, we will go back to 1946. Let's produce the financial statement for 1946 that you got $48,000 off of.

A. There again I have the financial statement which shows for 1946 and it lists the number of houses on here, but we didn't use this financial statement all together in determining this cost in progress because some of these houses were built back in 1942 which I have explained to you. He originally had so many houses. At the end of 1946 he sold six of them.

Q. I would like, please, sir, if you would, the figure out of the 1946 financial statement. I want you to show me where you got that $48,000 figure from.

The Court:

Have you got that financial statement?

The Witness:

Yes, sir; I was waiting for him.

By Mr. Cushman:

Q. I want you to show me, direct me to the words where it shows that you got that.

A. The financial statement lists new assets acquired in 1946, new houses, 1921 Orange Street.

Q. 421.

A. I mean 421 Orange Street, and shows retail pricing.

Q. New houses, 421 Orange Street?

A. That is right.

Q. What else is indicated on that, what two words appear there?

A. It says, "New Houses, 421 Orange Street, Retail Price."

Q. And you took what a man stated as the retail price and indicated as cost?

A. It would have been sixty or more.

Q. All right. Go down to the next one now.

A. Well he lists both, finished but not sold.

Q. What did he indicate for the new house 439 Orange Street? What did he show on that?

A. Fifty-five hundred.

Q. And that was retail price?

A. That is right.

Q. All right, sir.

A. The next thing—

Q. What did you think in determining the cost of those two houses if you did not use the retail price?

Mr. Wolff:

The Petitioner's counsel is asking first where he got the $48,000. He is trying to answer the question. I wish he would let him go ahead and answer that and then go on to other questions.

The Court:

The question that we were concerned about first was where did the $48,000 come from on the financial statement. Is that what you are asking him now?

Mr. Cushman:

Yes. I asked him to produce the financial statement from which he obtained the figure $48,000. He has gone into the financial statement which he said, and we are going down that page item by item.

The Court:

Can he explain it without going item by item? You asked, "Where does the $48,000 come from?" and he has not answered it Can't he count the items?

Mr. Cushman:

I think he has put down $48,000, and we want to know why the figures don't add up.

The Court:

I suggest you ask him how he got the $48,000 off that thing. I am going to have to decide this case, and I have to ask a question to find out what this is all about.

By Mr. Cushman:

Q. How did you get the $48,000 off the 1946 figures?

A. The schedule I have reference to there shows $18,000 and $6,000 carried forward. We know that equals $24,000. Now as of the last of 1946, he had sold three of those which would reduce the cost by $6,000 and make it $18,000 on here. Now we did not extend those figures of $18,000 and $6,000 across there as shown on the statement in prior years. We tried to work it out with the one figure to show the total ionstruction that he had in progress at the end of the year, completed or in the process of being completed.

You will find these houses here which is recorded on this 1946 statement showing that they were under construction or near completion, and you will also find security deeds in the next year showing where he sold them. So it is reasonable to expect they were in the process of being constructed at the end of 1946; it was a question as to how near completion they

were. Some of them he shows they are $6,800 and $1,660; some $309, $3,000, $6,000, $4,000—Well, we discussed with Mr. Anderson how near they were completed, whether they are half completed, three-fourths completed, or all the way.

If we had used the figures shown on the financial statement and added the $16,000 we had before then, we would have had something close to $70,000, I guess. Let me see. It would be better than $65,000. But they were not all completed, he said. So what we did was to use $30,000 out of the figure that is shown on this financial statement as being completed as of the end of 1946 and adding the $18,000 which made the $48,000.

Q. Now let me ask you this: Do you recall back yonder in the room when we were there before the Judge that you threw the $48,000 in there to sort of even it off over the years? Do you recall making that statement in the presence of the Judge?

A. It would not make any difference because there was a spread in there between that applied to the year 1942 as well as 1946.

Q. Did you or did you not make the statement back there in the presence of the Judge that you threw the $48,000 in the year 1946 to sort of even it across the board?

A. It was not in those words, sir.

Q. That is certainly the substance.

A. I would say it was just exactly what I got through saying here; that it is the cost of the houses we knew were completed plus some consideration to the ones that were in process at the end of the year, which is approximatly $48,000.

Q. And you threw the $48,000 in in 1946 to sort of equalize the income from year to year?

A. We didn't just throw it in there, we used the best evidence available to determine how far they were completed.

Q. I show you a letter addressed to Mr. Spillane from Mr. Bailey dated September 28 and ask you to read that letter, please, sir.

(A document was handed to the witness.)

Mr. Cushman:

I would like to have this marked for identification, if I may, Your Honor.

(Petitioner's Exhibit No. 39 marked for identification.)

By Mr. Cushman:

Q. Are you familiar with Mr. Bailey's signature?

A. I would not know if that is his signature or not.

Q. Isn't it true that there is no question that Mr. Bailey wrote that letter to Mr. Spillane?

A. I could not swear that he did.

Q. All right, sir. These words appear in this letter—

Mr. Wolff:

Objection, Your Honor. I do not see why it is appropriate at this time to bring out letters that have been written in the course of business, Your Honor. Mr. Orr has testified he does not know anything about the letter, he does not know whose signature it is, he cannot identify Mr. Bailey's signature. He has told where he has the $48,000, and I believe that that is sufficient without going into any other letters with respect to the amounts.

The Court:

I do not see how we can get this letter in here in evidence, Mr. Cushman. Of course, we can identify it and let the other side have an opportunity to cross examine the witness.

Mr. Cushman:

I do not think we can introduce it with reference to this witness. I would just like to get this witness's opinion as to the truth or falsity of those statements.

Mr. Wolff:

If Mr. Orr had anyhing to do with the preparation, I think it is entirely appropriate; but if he did not, I don't think there is anything.

The Court:

If the Government does not concede that that is a letter written by the Assistant Commissioner in this case, I think you have to prove before you can —

Mr. Cushman:

May I have permission to ask counsel for the Government if he will so concede?

Mr. Wolff:

Your Honor, there is no question that I do not think that letter was written by the Government, but I think we ought to have the man here who made the statements. He has his symbols on the ltter, G.L.H. I imagine that would be Mr. George L. Hutchinson. That is similar to the top of the letter, but I do not know anything else about it.

The Court:
You do not concede?

Mr. Wolff:
I concede it is a letter of the Government, but I think whoever wrote the letter should be here rather than asking Mr. Orr about it. I do not think it is proper evidence in the case.

Mr. Cushman:
The Government concedes it is an authentic letter. I think as a matter of good faith—

Mr. Wolff:
We do.

Mr. Cushman:
Anything that was written in this letter was bound to be based on Mr. Orr's work. It is in testimony that he is the man who made the report, and I think the letter is perfectly competent evidence and you should cross examine Mr. Orr on the contents of the letter.

Mr. Wolff:
I do not think we can examine Mr. Orr on the contents of the letter.

Mr. Cushman:
With reference—Excuse me.

Mr. Wolff:
Mr. Orr made the statement where he got the $48,000 and the $12,000. Now that seems to me that is all he can testify to. This letter relates to the $48,000

and the $12,000. Mr. Orr has told everything he knows. This letter has nothing whatever to do with Mr. Orr's testimony.

The Court:

He is right. Ask him if he knows anything about it. If he does not, we will not have any cross examination because this witness is not the witness to introduce it.

Mr. Cushman:

Do I understand the letter has been received in evidence?

The Court:

It has been offered.

Mr. Wolff:

I object, Your Honor, inasmuch as it is not competent; that the individual who wrote the letter is not before the Court and is not subject to cross examination at this time.

Mr. Cushman:

It is perfectly admissible as a declaration of interest. He could not have written about the letter unless he had had a conference with Mr. Orr, and I think that is certainly admissible.

Mr. Wolff:

I do not concede that the Government or the writer of this letter necessarily had to contact Mr. Orr in order to write the letter.

The Court:

That is a matter for argument; there is no proof of that.

I will let it in for whatever it is worth. You may ask the witness if he knows anything about. I do not think he should be cross examined on it if he says he does not know anything about it.

(Petitioner's Exhibit No. 39 received in evidence.)

By Mr. Cushman:

Q. What, if anything, do you know about this letter?

A. I will have to state that actually the letter itself, I have never seen until you showed it to me here. My original working papers did not show a ditto on that $12,000 part of the financial statement which speaks for itself here. First, I have not looked for it since it was typed; and second, I have tried to explain to you how the $48,000 here speaks for itself. We know these houses, and I think the schedule itself will show that we dropped out. And Schedule 9 backs up the statement even further because the property was sold in a later year.

Q. The question was, what do you know about the letter? And I believe your testimony was that you know nothing about the actual letter itself.

A. No, sir.

Q. What do you know with reference to the contents of that latter, the allegations contained therein that the individual houses were not specifically identified in the case record and that your statement represents fifteen houses at $4,000 each? What do you know about those statements in the letter?

A. I will go back to my original Schedule No. 1, which is my rough working papers which speaks for itself.

Q. Where on your rough working papers do you find fifteen houses at $4,000 apiece?

A. I have twelve houses here that when completed they would be $4,000.

Q. For when?

A. What?

Q. For what year?

A. On this financial statement for 1946 he lists these houses, some of which sold in 1946, and building a house and got security deed for the building and the next year.

Q. All right.

A. The statement itself is a mix-up of the 1946 financial statement a little bit mixed up as to exactly when the property was acquired and sold, so we had to work this out with Mr. Anderson and also from the deed record.

Mr. Wolff:

I think that the question was with respect to the work papers. Would you try to explain just any notations you have on your working papers with respect to the $48,000 and the $12,000?

The Witness:

We have here on the Construction in Progress or Finished for Sale twelve houses, and then it has down below three houses, $48,000 when completed. All of these—on both of them it has when completed it would be a cost of approximately $4,000.

By Mr. Cushman:

Q. What did you say your working papers show with reference to the number of houses, Mr. Orr?

A. We have got them listed here twelve and three.

Q. Do you maintain that the fifteen houses shown on Exhibit A, the revenue agent's report, is the typographical error? Was it intended to be fifteen houses at $4,000?

A. The fifteen houses when they were complete—in fact, there were even more on Orange Street. They had that many, but they were not all complete. There are really more houses than that involved.

Q. Is it not a fact, Mr. Orr, that 405 Orange Street was sold toward the end of the year; actually, on 8-1-46?

A. Yes, sir. It was sold before that.

Q. All right, sir. And it took the security deed back there on Howard Johnson?

A. Yes, sir.

Q. All right, sir. Now does that security deed from Howard Johnson show up in the security deeds for 1946?

A. We considered all of that. The reason we did not consider it to be thirty-six thousand—

Q. Just answer my question.

A. Where is Howard Johnson's security deeds?

Mr. Cushman:

If Your Honor please, how about a five minute recess? I believe we can shorten the proceedings.

The Court:

We will recess for ten minutes.

(Whereupon, a short recess was taken.)

The Court:
Are we ready to go ahead?

Mr. Cushman:
Yes, Your Honor, I believe so.

By Mr. Cushman:

Q. Mr. Orr, there is no question about the fact that on Schedule 1 in Exhibit A, the year 1946, you have added $48,000 and you have explained that as construction in progress or finished for sales?

A. It is there, but it should be more in detail than that to explain all that is back of it.

Q. And there is no question to that Exhibit A, beneath it, or ditto marks showing construction in progress or finished with reference to the year 1947, $12,000?

A. It does appear there, but this explanation which I—

Q. And there is no question that below that appears fifteen houses at $4,000 each?

A. That is right. But the working paper there again says those are houses when completed. These were not all completed at the time.

Q. Fifteen houses at $4,000 is $60,000?

A. That is right.

Q. And $48,000 and $12,000 is $60,000, isn't it?

A. That is right.

Q. Now I want to know what your working papers show with reference to the specific houses which you included as being represented by the fifteen houses shown on this financial statement. What specific houses did you include in arriving at those figures?

A. My records show that on Sand Bar Ferry Road there were twenty-four houses constructed, and we

have established the cost at approximately $4,000. At the end of 1946, six of those had been sold and left eighteen. Now it is a question of these other houses which were sold in 1947. I can give you the numbers there. This financial statement that you have reference to here, it is not altogether complete because some of these houses were completed and sold which he had in there. We are not duplicating those figures at all.

Q. What I want to know, if you don't mind, I wish you would call off the list of the houses which you included in the year 1946 in arriving at the figure $48,000.

A. We are not numbering the houses right down to the number and saying that is it, except that we have got the list of the houses that were sold in 1947.

Mr Wolff:

If you know some of the houses, give them; and if no, say so.

The Witness:

You will find that in this statement of 421 Orange Street it was sold in the early part of 1947; 419 Orange Street was sold in 1947; 417 Orange Street, 415 Orange Street.

By Mr. Cushman:

Q. Would you mind starting these again?

A. I believe 421 Orange Street was sold in 1947. And 417 Orange, 415 Orange, and 411 Orange Street were sold in 1946 but was included in there, so we did include it but it was sold in 1946.

Q. All right. What other houses did you include?

A. 405 Orange Street was shown there, but the security deed and warranty deed in 1946 show it. But it was shown on the financial statement. But we didn't consider that.

Q. All right, go ahead.

A. 399 Orange Street.

Q. What was that?

A. 399 Orange Street.

Q. All right.

A. 418 Orange Street and 414 Orange Street. I believe 406 Orange Street was sold in 1946, so it was on there; but it was sold in 1946.

Q. Well, was 414 included or should it have been left out, sir?

A. 414 was sold in 1947.

Q. 414 was sold in 1947?

A. Yes, sir.

Q. Not in 1946.

A. 400 Orange Street was sold in 1946. 417 Colorado was sold in 1947. 413 Colorado was sold in 1947.

Now on that 417 Colorado there was a warranty deed to the lot which was dated in 1946 but the security deed for the property was not picked up until 1947. He was showing it as under construction.

And there were other houses there that sold in the early part of 1947. It is possible they were under construction, too, then; and there might be even more than what we have there, depending entirely on how many were completed at the end of 1946.

Q. The fact is that the houses which you call off show on the 1946 financial statement, do they not?

A. No, sir; no, sir. You mean the houses?

Q. Yes.

A. Yes, part of it. The $30,000 here was added to the $18,000 that we had carried over from the other houses, which made the $48,000 in that 1946 figure.

Q. Where is the $18,000 worth of houses on the financial statement?

A. It is included in the $48,000.

Q. Where does it show up on the financial statement?

A. That might have been—He had on his financial statement houses completed or in the process of being completed.

Q. It is a fact that on the financial statement you knew assets were acquired in 1946. That shows on there, doesn't it?

A. This financial statement lists some of the houses that were sold in 1946.

Q. No, sir. I want to go to the last page of the financial statement, the one bearing his signature at the top there. Now what is the first word showing up on that thing?

A. It says, "New Assets Acquired in 1946."

Q. And is it a fact, sir, that every one of these houses that you call off here appear immediately below that new asset?

A. Yes, sir. But some of them we did not include in this $48,000 because we had sold them, picked them up in the security deeds.

Q. Did you include 421 Orange Street in the $48,000?

A. 421 Orange?

Q. Yes, sir.

A. That house was—let me see. Sold in 1947. It was sold in 1947, I believe. That is correct, sir.

Q. You included it then in 1946, did you not, sir?

A. We are not specifying a particular house here. We know that the man sold houses the early part of 1947. He had houses in progress at the end of 1946 and his financial statement lists some, but we tried

to work out of this the best we could the amount he had completed at the end of 1948.

Q. Mr. Anderson stated he had a new house at 421 Orange Street, retail $7,860.88. You included that house in the $48,000?

A. Yes, sir.

Q. All right. Did you also include 399 Orange Street at the retail price of $5,500?

A. Let me see, just a minute. I didn't include that full price in there, no, sir. Out of these houses we just included $30,000.

Q. Did you include 399 Orange Street?

A. That I am not sure exactly whether it was under construction or not. We have a list of the houses that were sold in 1947, early part, and then we tried to tie that in with this statement which mixed up with 1946 and 1947.

Q. What I want to know, didn't you just testify that you included 399 Orange Street?

A. Those were sold the first part of 1947.

Q. If they were sold in 1947, you must have included them, mustn't you?

A. I do not know to what extent each individual house was included. We included $30,000 worth of construction in progress at the end of 1946.

Q. The fact is, is it not, sir, on the Schedule I there was $24,000 that was complete as of 1945 and had been completed for several years?

A. He sold part of those in 1946.

Q. All right.

A. Sold three.

Q. What treatment did you give 399 Orange Street?

A. There again I am not going to identify the house into the $30,000. All I am going to tell you is that we had $18,000—old ones he had, a bunch of

houses he was selling in 1946 and 1947. We have arrived at approximately $30,000 completed at the end of 1946.

Q. Then as I understand it, you refuse to state what treatment you gave 399 Orange Street?

A. Without a lot of detail time to go back and check out on the thing, and it would take considerable time.

Q. What treatment did you give next on the financial statement to other houses on Orange Street, cost at this time unknown but estimated at $3,000?

A. We considered all of the houses under construction. And as I have explained before, the financial statement would run up to a considerable amount but there was a question as to whether it was completed or not. We did not include it again. The others were partly completed, some of them half, some of them three-fourths. And out of all of that, for the whole statement, we picked up $30,000 and added to the $18,000, which makes it $48,000.

Q. The same answer prevails with the $3,000; you are not going to be specific?

A. My answer will have to be there that we tried to arrive at the cost the best we could from the construction in progress.

Q. Now what treatment did you accord 400 Orange Street, $450, mortgaged house?

A. That particular piece was sold—400 Orange Street. It was sold in 1946 and there was not any in that part; sold in 1946 and picked up as a security deed a small amount.

Q. Did you put the security deed in 1946?

A. If it were sold in 1946, we would have. I will have to check that. Is that George Howard Johnson?

Q. 400 Orange Street, sir. You had the financial statement of Mr. Anderson right there before you, sir.

A. We have a security deed included in Richmond County for $2,500 from George H. and Louis H. Johnson. That was where he bought those two lots on Orange Street.

Q. What was the number of the street, sir?

A. Lots.

Q. Was it 400 Orange Street?

A. I show here on this schedule Lots Nos. 22 and 23. If I had that plat, I could identify which—

Q. Just a minute. What treatment did you give 405 Orange Street?

A. It was sold in 1946. Lots 22 and 23 have the number 400, and that was sold to Johnson in 1946. That is not included in that.

Q. Not included in the $48,000?

A. No, sir.

Q. All right. What did you do with 406 Orange Street?

A. Sold in 1946.

Q. What did you do with it?

A. 406 was sold—the lot was, I mean, in 1946. We picked up a security deed—that is, for 406—for thirty-six seventy-one in 1946.

Q. Is that shown in your security deeds?

A. Yes, sir.

Q. And that would not be included in the $48,000?

A. No, sir.

Q. All right. What did you do with 414 Orange Street?

A. That was sold in 1947.

Q. Did you include it or not include it?

A. I am not going to say which houses. We have a number of houses that were finished construction at

the end of 1946 that were sold in the first part of 1947.

Q. How about 418 Orange Street, Mr. Swindler?

A. Sold in 1947.

Q. Would you check your records on that again?

A. 418 Orange Street?

Q. Yes, sir; Mr. Swindler.

A. That was sold three times. I think Bloom and then Anderson and then Doolittle, I believe.

Q. All right, sir. Your testimony is that 418 Orange Street was sold in 1947?

A. Well, it is possible it was sold prior to that. There were three ownerships in there. He got it back one time.

Q. What does your investigation show with reference to 418 Orange Street in the year 1946? Where was it, who owned it, and what did you do with it?

Mr. Wolff:

I don't think that is part of the investigation, who bought it, et cetera. I don't think it is necessary.

Mr. Cushman:

We are trying to find out how he calculated this thing. He says on the financial statements—

The Court:

The witness has testified, as I understand it, that all those houses which were sold in this group in 1946 were not included in this $40,000 but that rather some value included for the security deed. Now it seems to me it should be simple enough for him to say how many houses there were that fell in that classification and those that did not, and perhaps he could identify them. Would it not be better to let him do that than individually?

Mr. Cushman:
I have only four more.

The Witness:
Your Honor, I would like to say to start with that my working papers, it would take me considerable time to go back and identify them, if that is what he wants to do. We did not identify them individually into this $30,000, and I would not want to testify to specific houses here without going back and taking time and rechecking my working papers. I will testify that we have houses under construction, and a number of them were sold in 1947.

The Court:
All right.
The last that we are talking about is what? Did we finish the answer to that one, Mr. Cushman?

Mr. Cushman:
Yes, sir.

By Mr. Cushman:
Q. To summarize, Mr. Orr, actually you did not use Mr. Anderson's financial statement in putting that $48,000 on it?
A. For information purposes tied in with the security deed, sold at a later date. We tried to use all of it plus a discussion with Mr. Anderson.
Q. You didn't indicate that on your revenue agent's report, did you?
A. All of this is brought out. You cannot put everything on the schedule up here. You have to have some of it back of it.

Q. Now, Mr. Orr, your contention is that $30,000 is all that you put on in 1946?

A. That is because he had these other houses on hand there.

Q. All right. And isn't it a fact then that he had $18,000 worth of houses—that is, nine houses at $2,000 —prior to 1946? Isn't that correct?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. Now if he had nine houses at $2,000 to come into the $48,000, would you please explain why your report shows fifteen houses at $4,000 each?

A. Those would be that price when completed. We were trying to determine what the houses were. He is listing the houses anywhere from $6,800 on down, and that was a notation on my work papers which I showed a minute ago. Four thousand dollars when complete. The question was how near completed they were.

Q. There were nine of them completed?

A. That is a different group entirely from this other group in here.

Q. Well, if it was fifteen houses at $4,000 each, your revenue agent's report for $48,000 there must have been $12,000, at least, to be in 1946, is that right?

A. I think this is what you don't appreciate. You have schedules which you are trying to pick over. We had to go out and dig this up from the best information available. And the source of information was to try to use the records that were available the best we could, of which your own records are a part. Part of them were sold in 1946, part in 1947. This financial statement is not complete. We used the se-

curity deeds and discussed it with Mr. Anderson on all these cases.

Q. I just want to get this now. The $48,000 includes nine houses which were built in prior years at $2,000 a house, which is $18,000, is that right, sir?

A. The best I can check out, that is correc,t sir.

Q. All right, sir. Now it is your contention that the rest of the houses were built at a cost of approximately $4,000?

A. We arrived at that figure. We are not accurate, we don't know. We just tried to work out with Mr. Anderson approximately what he had in it. He has different prices on this.

Q. What is the point of fifteen houses at $4,000 being on the revenue agent's report if he also included nine houses at $2,000 each, which automatically takes $18,000 and leaves you only $42,000 to recover?

A. I have to repeat myself over again there that we have houses completed, we have houses under construction. We tried to determine the amount of cost he had on hand at the end of the year, and as best we could from the information available that is the figure used.

Q. Then to the extent that your report indicates you got this information from Mr. Anderson's financial statement, that is inaccurate?

A. Partly. It came from his financial statement. We used the financial statement of Mr. Anderson, public records, anything we could get to try to determine what he had.

Q. What, pray tell, shows upon the public records as to the cost of the house?

A. When I refer to the records as to when they were sold, if they were sold in the early part of the following year, then they had to be constructed prior to or before the sale.

Q. Is there any question in your mind as to when the fifteen houses were built? Are we arguing about the houses?

A. More houses than that were sold, I believe.

Q. What do you mean on your financial statement when you say fifteen houses were built at a cost of $4,000?

A. Mr. Cushman, on my original papers it shows here that when completed, part of Sand Bar Ferry Road there, all of that could not be put on this; they condensed some of that in typing it up. I did not check all this when it was typed. This was typed some five years ago.

Q. You didn't check it?

A. I have checked the figures, but I am talking actually about the contents, the dots and figures and letters on it. I did not get all that. It is possible that they ran out of space, which looks like in here pretty well shows that. But we have not duplicated anywhere in this return. The fact is maybe we should add more than we have if he sold more houses in 1948 the same way.

Q. The truth about the thing is, you put the $48,000 in in 1946 to even off the income, isn't that what you did?

A. No, sir. We could have left it out entirely and it would have shown up when the security deeds jumped up in 1947 or 1948, but we tried to be fair.

Q. You made the statement back yonder to the Judge—

The Court:

I do not think we should refer to that. We were trying to expedite the case.

Mr. Cushman:

That was not a compromise; we were sitting there trying to agree.

The Court:

He was not under oath. We were speaking generally as to how to get together. Those are preliminary statements.

Mr. Cushman:

I would state that Mr. Anderson made statements which have been referred to here generally speaking, and those statements are to be used as declarations. And here is the man who made the examination who said, "I put $48,000 to even it off."

The Court:

I do not remember what he said exactly. We were all in there talking about figures and what we could do to determine what matters would be stipulated. I do not think anyone was paying particular attention to how accurate he was at that time. That is the only thing I had in mind. You can go ahead and ask him about it if you want, but I certainly did not think that that was a statement to be introduced into evidence here.

Mr. Cushman:

Yes, sir.

If Your Honor please, I should like to state at this time that we have no further questions. We certainly appreciate your forbearance. We have made every effort to find out where the $48,000 came from. That was the purpose of this letter, that was the purpose of this examination. Thank you for your patience and

your forbearance. We tried to do it, and we just don't know.

The Court:
Any further witnesses?

Mr. Wolff:
I have several questions I would like to ask the witness, Your Honor.

The Court:
All right.

Re-Direct Examination.

By Mr. Wolff:

Q. Mr. Orr, did you include in your net worth statement various assets such as cash on hand, valuables which might have been owned, Government bonds as shown in the inventories, tools that might have been used in the building of the houses—did you include any of that in the net worth statement?

A. No, sir.

Q. Why did you not include that?

A. We did not find the record of exactly which year it was bought or where it came from, and also the cash on hand was considerably more than those financial statements showed there. In order to be fair, we spread it out.

Q. Did Mr. Anderson have such items on hand at the beginning of the net worth period?

A. That would be hard to say. I do not know.

Q. Did he have any liabilities at the end of the net worth period?

A. Yes, he did.

Q. Mr. Orr, with respect to Augusta, you stated you lived there in 1943, did you not?

A. Yes, sir, I did.

Q. How long did you live there?

A. From about the first of September until August of 1947.

Q. Did you buy a house when you moved to Augusta?

A. Yes, sir.

Q. Did you sell that house when you left Augusta?

A. I did.

Q. From your experience in the sale of that house, did the value of real estate go up or down?

Mr. Cushman:

I am going to object to that, Your Honor. There was no attempt to qualify Mr. Orr as having any experience or ability to testify as to the real estate values.

Mr. Wolff:

I think you asked on cross examination as to when he lived in Augusta. I was trying to go into that.

The Court:

Mr. Wolff, I believe it would be improper to go into anything so remote. Furthermore, I think Mr. Orr has not been qualified as an expert on real estate value, simply on point of sale.

Mr. Wolff:

So far as not being qualified, I was going to ask what he did with respect to his own house, what happened to his house.

The Court:
The question has no connection with this case unless it is to qualify the witness as an expert to testify on values.

Mr. Wolff:
I withdraw the question, Your Honor.
I might say, Your Honor, I might have one or two questions here that I did not go into on direct examination. However, I can put on another witness to bring out those answers to the questions, or I can bring them out by Mr. Orr.

The Court:
What does Petitioner's counsel say to that?

Mr. Cushman:
Let me hear the question, if Your Honor please, and then we can see.

By Mr. Wolff:
Q. Did you try to locate Mr. Senn in Augusta, Georgia?
A. Yes, we did.

Mr. Cushman:
I object to that, if Your Honor please.

Mr. Wolff:
I will ask it through another witness then.

The Court:
All right.

By Mr. Wolff:

Q. Where did you obtain the financial statements, Mr. Orr?

A. Mr. Spence got those from Mr. Anderson in 1950.

Q. Were any of these financial statements which you used to obtain the record from the bank?

A. Not to my knowledge.

Q. During your investigation did Mr. Anderson ever state that any of the security deeds were owned by his mother?

A. I don't recall it

Q. Did he ever state any were owned by his daughter?

A. I do not remember it.

Q. Did he ever state they were owned by anyone other than himself?

A. I don't remember his statement.

Q. With respect to the securities that you have included in your net worth schedule in the name of Mrs. Mary Poole Anderson and Mrs. Ozzie Faglie, the ones that you have included in Mr. Anderson's net worth, do you know who acquired those stocks?

A. Most all those securities were in Mr. Anderson's possession, and the broker's records will show they dealt strictly with Mr. Anderson, I believe.

Mr. Cushman:

If Your Honor please, we just brought the broker's records to show the beginning, and in the second place, the broker's records show who.

The Court.

The broker's records are in evidence?

Mr. Cushman:

Yes, sir. Introduced by the Government, I might add.

By Mr. Wolff:

Q. You checked the C & S Bank, did you not, for the balances at the end of the year?

A. I did.

Q. How many accounts did they tell you Mr. Anderson was maintaining at December 31, 1940?

Mr. McNatt:

I believe all that is stipulated. We have gone all through it through the tax. I do not have any objection except as to time-consuming. It has been stipulated what the banker told Mr. Orr. I do not think it is even relevant. He had so much money in the bank and so many bank accounts. What the banker told Mr. Orr—

The Court:

I believe we went into that on cross examination. I believe we went into that on cross examination with respect to the C & S Bank, Georgia Railroad Bank & Trust Company, and First Federal Savings & Loan Association.

By Mr. Wolff:

Q. How many account balances did the bank furnish you on December 31, 1940?

A. C & S and Georgia Railroad Bank, one.

Q. Actually, it turned out there were two at the C & S Bank?

A. Since we come in we found that out, yes, sir.

Q. Originally they did not tell you of these two accounts?

A. We never saw but the one.

Q. Why did you not contact the people who rented from Mr. Anderson, Mr. Orr?

A. Because we had determined on our first contact that he did not have accurate records to prepare an operating statement, and it was not necessary to run down the income from rents if we were going to use net worth.

Q. Your net worth is subject to severe consideration, is it not, Mr. Orr?

A. It is.

Q. With respect to the $43,000 figure, Mr. Orr, how many houses do you have the address of the houses that were sold in the early part of 1947 that could possibly have been included in that $48,000 figures?

Mr. McNatt:

I believe that calls for a conclusion on the part of the witness.

Mr. Wolff:

Your Honor, I might call for a conclusion. He included some of these houses in the $48,000 figure. I think he is entitled to show which ones it might have been.

Mr. Cushman:

He has been trying for four or five minutes.

The Court:

The witness has testified that there were a number of houses which were not completed. I am not sure how many houses he said there were, but I understood him to say there were more than enough to cover the twelve or fifteen that have been referred

to. Now that is a question that I have been wanting to ask: Can he name or identify those houses from which either twelve or fifteen uncompleted houses could have been included? Is that your question?

Mr. Wolff:
Yes, Your Honor.

The Court:
That is the question I have been puzzled about.

The Witness:
We know that out of the houses on Sand Bar Ferry Road which were carried forward a long time, he sold about seven of those in 1947 and left two.

The Court:
How many were there?

The Witness:
Twelve originally, and up to 1946 he sold three.

By Mr. Wolff:
Q. Mr. Orr, I show you Exhibit 19. Would you give those houses that were sold in 1947 from that schedule?
A. Well out of all this schedule here, I would say all were sold except two. And I will have to identify those from my notes here.
Q. Can you do that with your notes?
A. Yes. 416 and 406 I believe were sold at a later date.
Q. That is 416 what?
A. 406 Sand Bar Ferry Road and 416 Sand Bar Ferry Road. They were sold in 1948.

Q. How about the ones sold in the early part of 1947 which were possibly included?

A. Well, 424 Sand Bar Ferry Road, 418 Sand Bar Ferry Road, 410 Sand Bar Ferry Road, 404 Sand Bar Ferry Road, 402 Sand Bar Ferry Road, 338 Sand Bar Ferry Road, 336 Sand Bar Ferry Road.

And in 1947 the record shows that also sold were 421 Orange Street, 419 Orange Street, 427 Orange Street, 415 Orange Street, 407 Orange Street, 403 Orange Street, 399 Orange Street, 418 Orange Street, 414 Orange Street, 398 Orange Street, 417 Colorado, and 413 Colorado.

One or two of those lots the lot was sold one year and the building was constructed and the security deed for the next year.

The Court:

Now how many was that? Did anyone count?

Mr. Wolff:

Nineteen, Your Honor.

The Court:

Now I would like to ask the witness, some of those were sold in 1948 and some in 1947?

The Witness:

No, all I called up there were sold in 1947.

The Court:

All the nineteen that were listed?

The Witness:

I believe that is right, sir.

The Court:

And do you know if those were under construction in 1947?

The Witness:

Well, no, sir. The nine of them on Sand Bar Ferry Road had been completed back in 1942. That is where I get the $18,000 that I have been referring to.

The Court:

These that you have called out?

The Witness:

The first ones I called out, Your Honor, were built back in 1942 but sold in 1947, which we show as a separate item on the net worth statement. We prepared those to try to arrive at one total figure he had under the construction in progress, either completed or sold.

The Court:

Well, what are these fifteen houses at $4,000 each? That is what we are trying to figure out, which ones those were. You mean that out of all those nineteen there could have been either that figure, those that you named could be the ones that are referred to here, the fifteen or the twelve? I do not understand the fifteen or the twelve at this point myself.

The Witness:

Well, the three were built at the last part of 1947 and sold in 1948. Carried over two of these from Sand Bar Ferry Road. We just added to that figure which makes it twelve.

The Court:
I see.

The Witness:
By this balance the $48,000 consisted of nine houses that were brought over in original construction back in 1942 and 1943.

Mr. Cushman:
Judge, that was nine houses at $2,000. He claimed $18,000 came over. That is nine houses which had nothing to do with the fifteen houses.

The Court:
That is what I want to get straightened out. In the nineteen that you named, did that include the nine at $2,000?

The Witness:
Well, see, Your Honor, part of these that were sold in 1947 might have been constructed in 1947; we can't tell for sure, we don't know.

The Court:
All right.

The Witness:
So based on the financial statement he was listing some houses there, and it is possible that he had that many or more under construction. There were no records, you could not pin it down other than try to tie it in if they were sold or according to security deeds.

Mr. Cushman:

Do you mind if I say something, sir? The nine houses that we are talking about at $2,000 which makes up the $18,000, all those houses were on Sand Bar Ferry Road.

The Witness:

And I named Sand Bar Ferry Road here in the list of nineteen.

Mr. Cushman:

That is right, and that left only ten—whatever the figure happened to be. I wish Your Honor would pursue that and try to see that.

The Court:

I am confused.

The Witness:

On the construction in progress in Schedule 1, Exhibit A, we included all those houses on Sand Bar Ferry Road and included them in one total figure.

The Court:

Where?

Mr. Wolff:

The $18,000 is $6,000, see.

(Discussion off the record.)

The Court:

Let us now talk into the record. Will you say again what you said, Mr. Orr?

The Witness:

We have nine houses that were constructed back in 1942.

The Court:

And that appears as Schedule 1 of Exhibit A?

The Witness:

Yes, sir, and that ran through 1945. Well, we dropped it then. We could have carried it on and broken it down, but we had to explain the figures. We tried to explain the $48,000. The $6,000 that were constructed in 1943 was carried on that way. Now out of those nine houses—twelve houses it was—that was built then, he had a few of them on hand at the end of 1946. In fact, I believe it was nine of them left on hand, and the cost on that would be $18,000 remaining, which is included in the $48,000.

The Court:

In the $48,000?

The Winess:

Yes. We really didn't add there but $30,000 for cost of houses under construction.

The Court:

Under construction?

The Witness:

Yes. Now this fifteen houses, I mean $4,000 each, was approximate cost when completed. If you will notice, we are not saying they were all complete. We do not know how near they were completed.

The Court:

There is some conflict here between that sort of calculation and the calculation that the fifteen houses were at $4,000 each as I see it.

The Witness:

Well, yes, sir. My original working papers show that these twelve houses that were $4,000 when completed, they also add a part of the southside of Sand Bar Ferry Road just throwing in that $48,000. It is true maybe I should have carried it on out there and showed at a separate item, but I consolidated all the construction in progress there under one figure.

The Court:

Of $30,000?

The Witness:

We added $30,000 to the $18,000 that we carried over.

The Court:

Well do you mean that the $48,000, in your opinion it is your testimony now that the $48,000 does represent houses under construction or is that the value of houses completed or under construction?

The Witness:

Yes, sir; that is right, sir.

The Court:

And the twelve is the same?

The Witness:

Same for the next year, yes, sir.

Mr. Wolff:

Your Honor, with respect to a question I asked a few minutes ago with respect to Mr. Senn as to whether or not what Mr. Orr did in connection with trying to locate Mr. Senn, the Petitioner's counsel have inferred that the agents in this case did not do everything they should have done in trying to run down leads. There were some questions as to what he did with county warrants. "What did you do with respect to locating income, income in the books, of other third parties? What did you do with respect to cash on hand?" Now this directly goes to the cash on hand, and Mr. Orr mentioned that Mr. Anderson had said something about the buried money. Now what did he do to find out about the buried money or where did he get the money? I think he should be entitled to tell the Court what he did to try to find Mr. Senn.

Mr. Cushman:

There is not one word of testimony on direct or cross examination as to what effort Mr. Orr went to find out about the liabilities of the taxpayer.

The Court:

You say there is one?

Mr. Cushman:

Not one, nothing. No questions were asked with reference to what efforts he made to determine the liabilities of the taxpayer. This has nothing to do with liability; that has something to do with cash on hand. Your Honor.

The Court:

If you can show it by another witness, I think it would preferable.

Mr. Wolff:

All right, Your Honor. No further questions, Your Honor.

Mr. Cushman:

Nothing further.

(Witness excused.)

Mr. Wolff:

I would like to call Mr. John Spence now.

Whereupon, JOHN E. SPENCE, was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

The Clerk:

State your name and address, please.

The Witness:

John E. Spence, 6040 Fourteenth Street, Northwest, Washington, D. C.

Direct Examination.

By Mr. Wolff:

Q. Mr. Spence, your name has been mentioned several times in the testimony here. Are you the same Mr. Spence who has been mentioned?

A. I am a special agent with the Internal Revenue Service.

Q. You investigated with Mr. Orr the income tax liability of the Petitioner, L. T. Anderson?

A. Yes, I was in evidence.

Q. When were you first acquainted with the case, Mr. Spence?

A. Mr. Orr mentioned sometime prior to 1949 the examination he was interested in down in Augusta, Georgia. He just mentioned it to me while I was down there working on the cases.

Q. And when were you called into the case. Mr. Spence?

A. I became actively participating in the case in 1950, January 1950.

Q. State whether or not you heard a story about cash on hand from the Petitioner.

A. Yes.

Q. What did you hear?

A. He said he had money buried.

Q. Did you ask him where he got that money?

A. Yes.

Q. What did he say?

A He claimed that he got money from a Mr. E. R. Senn somewhere in Miami, Florida.

Q. Did you try to locate a Mr. Senn?

A. Yes.

Q. What efforts did you use to locate Mr. Senn?

A. At that time we looked around Augusta. That was five years ago and I am not definite in my mind as to all the details, but recently this Saturday we went down and looked again and looked at the City Directories in 1940 until the present time and looked ot a tax digest for 1949 to the present time. We also looked at a Southern Bell telephone book for Miami,

which is the telephone company there. We found no indication of E. R. Senn.

Q. You say you checked the Augusta city directory?

A. Yes, sir.

Q. For what years?

A. 1940 through 1953.

Q. You cannot locate an E. R. Senn?

A. No, sir.

Mr. Cushman:

We would like to object to this testimony on a number of grounds. One is that the Senn notes were received without objection. I might add to that, without any reservation they were accepted. The second ground is that obviously the investigation was made a considerable time after the notes were executed and paid. Third, when this gentleman testifies as to what he did not find in the Augusta directory, he is in effect testifying as to what is in that directory, and that is hearsay testimony.

The Court:

No. As I see it they are trying to mention the idea that they did not fail to run down all leads. Now he said he did not find it. That is not tantamount to say that the directory did not contain it; he did not find it.

By Mr. Wolff:

Q. I show you, Mr. Spence, a copy of a net worth schedule which is a copy of Exhibit A, except there have been certain penciled notations made in there. Will you turn to Schedule No. 2 and explain the penciled notations made thereon?

A. Schedule 2, X marks the left of Virginia Whitecotten; X alongside Annie B. Wahl; X alongside Virginia Whitecotten; X along Virginia Whitecotten, second listing in the schedule of that same name; X along the same of Virginia Whitecotten, the third time that name is listed in the schedule; X alongside L. D. Whitecotten; XX along G. Lee Boyd at the bottom.

Q. What do those X's and XX's signify?

A. At the bottom of the schedule there is a legend which says those marked X are claimed by Petitioner to belong to the mother, Exhibit 16.

Q. How about the double X?

A. Claimed by Petitioner to belong to daughter, M. Anderson, Exhibit 16. Another item in the legend is "Remainder stipulated per Exhibit 5-L."

Q. That was Schedule 2. Was the same thing done with respect to Schedules 3, 4, and 5?

A. Yes, sir.

Mr. McNatt:

I do not understand what Mr. Spence coming by and making X's, what relevance it has in the case.

The Court:

Are we speaking of Exhibit A?

Mr. Wolff:

Yes, Your Honor.

The Court:

Who did this and when?

Mr. Wolff:

This is a consolidation of several exhibits which have come into this testimony, Your Honor. The wit-

ness has testified that with respect to Schedule 2 all of the figures in Schedule 2 have been stipulated. Now some of them stipulated on Exhibit 5-L and some of them in Exhibit 16 were claimed by the Petitioner to belong to the mother and daughter.

The Court:
I understand that.

Mr. Wolff:
Now the witness has gone through those schedules and exhibits and conformed this exhibit with those other two exhibits.

The Court:
I see.

Mr. Wolff:
That is merely all he has done.

The Court:
You want to put that in for purposes of tying together all the exhibits in the case?

Mr. Wolff:
Yes. What I will do, rather than question the witness at length about it, I will offer it in evidence not as proof of anything contained therein but on the same basis as Exhibit A was originally issued, to show the computation and to also show in this case the agreements which have been reached with respect to the various items.

Mr. McNatt:
I submit the individual stipulation and exhibit will speak for themselves. I am sure the Court does not

need the support of Mr. Spence to explain it to him. That is the determination of the Commissioner of Internal Revenue, that these are to be his determinations. I think that we can handle that on brief.

The Court:

This is a matter which can be handled on your brief if you want to be helping the Court.

Mr. Wolff:

I was certain this would save the Court some time.

The Court:

I think it might be helpful to the Court to have this, but I do not think you need to have the witness testify on it.

Mr. Wolff:

No further questions.

Mr. Cushman:

No questions, Your Honor.

The Court:

Thank you. You are excused.

(Witness excused.)

Mr. Wolff:

I would like permission to substitute at the present time photostatic copies of the income tax returns which have previously been introduced in evidence. These are photostats of Exhibits U, V, W, X, Y, Z and AA. I would like permission to substitute photostats for the originals at this time, Your Honor.

The Court:
Any objection?

Mr. McNatt:
No objection.

The Court:
They will be received in lieu of the originals.

Mr. Wolff:
With respect to the testimony of Mrs. Fincher, which we had earlier in the hearing and which Petitioner's counsel stated they would reserve the right to cross examination until such time as Respondent did not put her on the stand or—

The Court:
They waived the right of cross examination.

Mr. Cushman:
Yes, sir. Your Honor ruled, so that will do it.

Mr. Wolff:
With respect to the witness under subpoena, Mrs. Mary Poole Anderson, the Government at this time desires to release her of that subpoena.

The Court:
She is relieved.

Mr. Wolff:
I would also like to introduce at this time the security deeds of Akin County, South Carolina, six security deeds, certified copies of those deeds obtained from the clerk of the Court in Akin County, South

Carolina. These are the deeds which Petitioner has listed on Exhibit 16 as belonging to his mother and daughter. There are supposed to be seven deeds here, seven certified copies of deeds from the clerk of the Court in Akin County, South Carolina.

Mr. Cushman:
We have no objection, Your Honor. Judge, there is one of them we could not afford to object to.

The Court:
It will be received.

(Respondent's Exhibit II marked for identification and received in evidence.)

Mr. Wolff:
I would like to submit, Your Honor, Respondent's Exhibit JJ, certified copies of deeds from Richmond County, certified by the deputy clerk; security deeds which in Petitioner's Exhibit 15 were listed as belonging to either Mrs. Mary Poole Anderson or Mr. L. T. Anderson's daughter.

Mr. McNatt:
No objection.

The Court:
They will be received.

(Respondent's Exhibit JJ marked for identification and received in evidence.)

Mr. Wolff:
I would like to submit at this time, Your Honor, as Respondent's Exhibit KK, four security deeds from

the clerk of the Court, certified copies of the deeds from the clerk of the Court, Jefferson County, Georgia, which relate to Exhibit 14 of the Petitioner which Petitioner has stated belonged to his mother.

Mr. McNatt:
These are security deeds?

Mr. Wolff:
Security deeds, yes, sir.

Mr. McNatt:
No objection.

The Court:
They will be received.

(Respondent's Exhibit KK marked for identification and received in evidence.)

Mr. Wolff:
Your Honor, with respect to various items which have been stipulated, there is something on Schedule 7 with respect to property purchased and the cost of the property which I think it is probably already stated in the record, but I would like to clarify and make certain at this time that it is.

Schedule 7 of Exhibit A lists various properties which were purchased by the Petitioner, Mr. L. T. Anderson. There is also an allocation, some allocation made in those schedules with respect to land and improvements which have been made. Now Joint Exhibit 9-P lists various properties which were purchased by the Petitioner in Akin County, South Carolina. Now with respect to the items, the cost items

appearing in Schedule 9-P and the Joint Exhibit 9-P and Schedule 7 of Exhibit A, in 9-P. there is a figure stated there "Total Cost" or total. With the Petitioner, Respondent in his Schedule 7 and the figures in some instances differ between 9-P and Schedule 7, total cost of the properties. The agreement has been made that the difference between that, a difference would be taken between the figures appearing on 9-P and Schedule 7 and such difference which exists will be split down the middle between the parties. If there is no difference in the figures, the amounts as appearing in 9-P and Schedule 7 are stipulated.

The Court:

It was my understanding that you agreed to do that and amend your exhibit.

Mr. McNatt:

That is correct, Your Honor.

The Court:

We have that confusion here.

Mr. McNatt:

We are in the process of amending that and the rest of them.

The Court:

Let the record show that there may be substituted for the existing exhibit a new exhibit.

Mr. Wolff:

With respect to Schedules 7 and 9 I have done that, and my special agent has done that. That is what he was going to put in if there was any disagreement.

We have already discussed and compared figures with Petitioner's counsel.

The Court:
Have they been retyped?

Mr. Wolff:
No, Your Honor, just crossed through and put in pencil on my Schedule 7, the difference between the two.

The Court:
Could you take the exhibit and do it in ink and change it in ink and both parties agree, the one that is in evidence now?

Mr. Wolff:
I think that schedule would have to be retyped.

The Court:
All right.

Mr. Wolff:
And the same is true with respect to Schedule 9 and Schedule 11-R, which are similar schedules.

The Court:
Why not have them retyped and they can be substituted when you send them in.

Mr. Wolff:
In addition, Your Honor, there are the depreciation schedules which of course are based on cost. They are schedules in the net worth statement, Exhibit A; Schedules 13, 14, 15, and 16.

Now with respect to Schedule 14, there is only one item on there and the parties are in agreement with respect to that one item. With respect to Schedules 13, 15, and 16 there are various items where the cost computations differ. The parties have gone over those last night and compared our costs with theirs and have arrived at a satisfactory figure to be stipulated which was half way between the two.

Mr. McNatt:
That is correct.

The Court:
Very well. Why not then in conformity with that agreement substitute a corrected exhibit? This is going to be most confusing when I have to get into the record unless the exhibits are clear.

Mr. Wolff:
With respect to the depreciation rates, the agreement has been reached, Your Honor, that the depreciation rates as used by the Government in their Schedules 13, 15, and 16 were agreed to by the Petitioner.

The Court:
All right.

Mr. McNatt:
That is correct, Your Honor.

Mr. Wolff:
Now with respect to the substitution of exhibits, Your Honor, because of the difficulties that counsel have being away from home, both counsel, and not

having proper office facilities to type these schedules, it is requested that the record be kept open for about ten days, say for ten days, for the substitution of these exhibits. And on these exhibits we will state which exhibit they are intended to be substituted for.

The Court:
Very well. Is that agreeable?

Mr. McNatt:
That is agreeable.

Mr. Wolff:
I think we better make that twenty days, Your Honor, if the Court please.

The Court:
All right.

Mr. Cushman:
Make it twenty-one days or three weeks, that is a nice round figure.

The Court:
Three weeks.

Mr. Wolff:
Your Honor, I also have in the Courtroom Mr. Ward who was associated in this case in a very small degree. I do not feel that he could add anything to the testimony that has already been given by Mr. Orr. However, if the Petitioner feels that Mr. Ward could add anything to their case, I would be glad to put Mr. Ward on the stand for examination by the Petitioner.

Mr. Cushman:
Mr. Ward, we won't have a busy night so we will just let him go by.

The Court:
All right.

Mr. Wolff:
At this time, Your Honor, Respondent rests.

Mr. McNatt:
Petitioner rests.

The Court:
The case stands submitted.

How about the briefs? I hope that both parties will very, very carefully prepare their findings of fact in accordance to the record and the exhibits. It is a very long record, and it is going to be computed.

Mr. McNatt:
In view of other commitments, we think that 120 days in view of this record would not be unreasonable.

The Court:
One hundred twenty days.

Mr. McNatt:
I might say this: The last net worth case I had that and I like not to got through. It is quite a job, as you know, writing a brief on a net worth case.

The Court:
How about writing an opinion on one, too?

Mr. Wolff:

I have no objection to 120 days. I would have suggested 90 days myself, but I have no objection to 120.

The Court:

That is for initial briefs.

Mr. McNatt:

Yes, sir.

The Court:

How about reply briefs?

Mr. McNatt:

About thirty days, would that be all right?

The Court:

Is that enough time?

Mr. Cushman:

Forty-five would be good.

The Court:

One hundred twenty days and forty-five days then.

Mr. Wolff:

Thank you, Your Honor.

Mr. McNatt:

Thank you, sir.

The Clerk:

February 14, 1956, for 120 days, and forty-five days after—

Mr. Wolff:

Isn't forty-five days thereafter on March 30, 1956?

Mr. Cushman:

If Your Honor please, we would request permission to substitute photostats of the two notes to Mr. E. R. Senn.

The Court:

Is there any objection on the part of the Respondent?

Mr. Wolff:

One moment, Your Honor.

Your Honor, I would like to leave those particular notes in. I think that the Court should see those, the original of those documents themselves. Certain portions of them, there are similarities existing between the paper which I believe would not show up on the photostat.

Mr. Cushman:

The notes have been received without objection, Your Honor.

Mr. Wolff:

Mr. Cushman has stated twice those notes were received without objection. I think the record will show that they were properly objected to at the time.

Mr. Cushman:

Have not called any objection to it, no, sir.

The Court:
I will have to keep the originals since the opposing party objects until the Court is through with them, then they will be returned.

Mr. Cushman:
All right, sir.

Mr. Wolff:
Can we go home now?

The Court:
Is that all?
The case stands submitted.

(Whereupon, at 5:15 o'clock p.m., Tuesday, October 18, 1955, the proceedings in the foregoing matter were concluded.)

MEMORANDUM FINDINGS OF FACT AND OPINION.

Filed July 31, 1956.

T. C. Memo. 1956-178.

Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson, Petitioners,

v.

Commissioner of Internal Revenue, Respondent.

Lewis Thurston Anderson, Petitioner,

v.

Commissioner of Internal Revenue, Respondent.

Docket Nos. 35385, 35386.

Determination of income upon basis of net worth increase held justified. Amounts determined by respondent modified in certain respects.

Additions to tax determined by respondent for fraud, failure to file return, failure to file declarations of estimated tax and for underestimation of tax, approved as to some years and disapproved for others.

Statute of limitations held to bar assessment and collection of tax for some years.

Edward C. Cushman, Esq., L. E. McNatt, Esq., and Thomas R. Spillane, C.P.A., for the petitioners.

Herman Wolff, Jr., Esq., for the respondent.

The respondent has determined deficiences in income tax and additions thereto for the calendar years and in the amounts as follows:

Year	Deficiency in Tax	Additions 50 Per Cent Sec. 293(b)	25 Per Cent Sec. 291(a)
1941	$ 838.80	$ 419.40	—
1942	4,477.86	2,238.93	—
1943 (Income and Victory Tax)	4,721.87	2,360.94	—
1944	744.79	372.40	—
1945	23,552.32	11,776.16	—
1946	17,747.47	8,873.74	—
1947	26,532.30	13,266.15	$ 6,633.08
1948	10,968.96	5,484.48	—

The deficiencies have been determined on the basis of increases in the net worth of the petitioner, Lewis Thurston Anderson, plus living expenses, less allowable deductions. The petitioner alleges a number of errors in the determination, among which are the valuation of notes secured by deeds included in assets, failure to allow full costs of properties sold, inclusion of assets that were not those of the petitioner, failure to allow capital gains treatment and installment basis with respect to real estate sales, failure to consider the full amount of cash on hand; and to make allowance for all liabilities. The petitioner denies that there was fraud, or ground for the determination of the 25 per cent addition for the year 1947, and asserts that assessment and collection are barred by the statute of limitations for 1941, 1942 and 1943.

By amendments to his answers the respondent asserts liability for additions by reason of failure to file declarations of estimated tax for 1947 and 1948, and for underestimates of estimated tax for 1943, 1946, 1947 and 1948. He also asserts that, under section 6 of the Current Tax Payment Act of 1943, the deficiency for 1943 should be increased in the event we decide there was no fraud for the year 1942. He claims increased deficiencies resulting from such additions.

Findings of Fact.

At the hearing a few of the facts were stipulated and are found as stipulated, the stipulations being incorporated herein by this reference. Lewis Thurston Anderson, usually referred to herein as the petitioner,

is a resident of Augusta, Georgia. During the years 1941 to 1948, inclusive, the petitioner and Clyde Velma Anderson were husband and wife.

For each of the years 1941 to 1946, inclusive, the petitioner filed an income tax return, Form 1040, with the collector of internal revenue for the district of Georgia. For the year 1947 the petitioner did not file a declaration of estimated tax or an income tax return. For the year 1948 the petitioner and his wife filed a joint income tax return with the collector for the district of Georgia. The petitioner filed declarations of estimated tax for the years 1943, 1944, 1945 and 1946. He did not file a declaration of estimated tax for the year 1948.

The petitioner had a high school education. Prior to 1917 he learned the jewelry business from an older watchmaker in Wrens, Georgia. He received no pay while learning the business. In 1917 he moved to Augusta, Georgia, where he was employed as a skilled watchmaker and jeweler which employment he continued until 1946. Shortly after starting employment in Augusta, his salary was $55 per week. When he discontinued his employment in 1946 it was $70. During the latter part of his period of employment he worked on a part-time basis.

In his income tax returns the petitioner reported salary and other compensation for personal services in the following amounts:

Year	Amount	Year	Amount
1941	$1,935.00	1944	$3,200.00
1942	2,448.00	1945	3,585.00
1943	2,860.00	1946	1,248.31

No amount was shown on the 1948 return as compensation for services.

The petitioner commenced acquiring real estate in and around Augusta, Georgia, at the time he moved to that city. His earliest acquisitions were for the purpose of producing rental income. Some of the houses he acquired at first were run-down and burned houses. He also acquired some tracts with timber on them. The acquisition of real estate by the petitioner was a continuous process, at least from 1926 on. Some of the rental properties that he owned in some of the taxable years were on Emmett Street, Chaffee Avenue, Heckle Street, Cooper Street, Calhoun Street, Tuttle Street, and East Boundary Street. Prior to 1946 he also acquired a tract of at least 50 acres on the Sand Bar Ferry Road outside of the city of Augusta. He subdivided the Sand Bar Ferry tract into 60 building lots and constructed houses on it, some of which were initially built for rental and some for sale. He also owned at least 11 rental houses in what was known as Druid Hills and 7 houses in Brookside, both in Aiken County, South Carolina. In that county he also owned two tracts of land that aggregated 201 acres, and had a one-half interest in another tract of 767 acres. In McCormick County, South Carolina, he acquired 132.5 acres of land in 1941 and an additional 80 acres in 1946, both of which he continued to own through the taxable years. In Jefferson County, Georgia, he owned a store building that he inherited from his father in 1929, and which was rented throughout the period 1941 to 1948. The rentals on some of his properties in Augusta were collected for him by a real estate firm.

At the close of each year listed below the petitioner owned parcels of real estate in the numbers and having total costs as follows:

	Aiken		McCormick		Jefferson		Richmond
Year	No.	County	No.	County	No.	County	No.	County
1940	30	$34,425.02	–	—	1	$ 2,300.00	22	$28,528.92
1941	32	36,125.02	1	$ 425.00	1	2,300.00	23	30,403.92
1942	28	31,575.85	1	425.00	1	2,300.00	23	35,628.92
1943	28	31,575.85	1	425.00	1	2,300.00	25	37,277.95
1944	29	33,575.85	1	425.00	1	2,300.00	28	52,185.45
1945	14	18,410.01	1	425.00	1	2,300.00	21	40,213.51
1946	11	13,198.27	2	1,225.00	1	2,300.00	17	31,427.07
1947	8	6,823.27	2	1,225.00	1	2,300.00	16	28,389.51
1948	8	6,806.30	2	1,225.00	1	2,300.00	15	26,192.59

In addition to the above properties, the petitioner owned houses in the Sand Bar Ferry tract that he had constructed for the purpose of renting, in the numbers and at costs, as follows:

Year	No. Houses	Aggregate Cost
1942	9	$18,000.00
1943	11	22,000.00
1944	11	22,000.00
1945	11	22,000.00
1946	9	18,000.00
1947	3	6,000.00
1948	None	None

In addition to the properties above listed, the petitioner owned houses at December 31, 1946, in the Sand Bar Ferry tract either completed or under construction in which he had an investment at that date of $30,000.

In the years 1946, 1947 and 1948, the petitioner sold houses in the Sand Bar Ferry Road tract that he had constructed for sale, the costs of which were as follows:

Houses Sold		
1946	1947	1948
$ 3,471.40	$ 4,711.33	$ 6,000.00
5,504.00	4,943.99	5,500.00
4,350.00	5,641.96	5,500.00
3,950.00	5,176.65	4,500.00
	4,711.33	
	3,751.62	
	4,500.00	
	6,456.27	
	4,000.00	
	5,760.00	
	4,350.00	
$17,275.40	$54,003.15	$21,500.00

These houses, and three more that he had on hand at December 31, 1948, which three had been constructed at a total cost of $15,600, were the only houses that the petitioner constructed primarily for sale. They were built in the River Side Park subdivision of the Sand Bar Ferry Road tract. They were built by the petitioner in order to enable him to dispose of the land which was the back part of the tract.

In the years 1942 to 1948, inclusive, the petitioner also sold parcels of real estate and unimproved land

as listed below. The aggregate numbers of parcels, selling prices, costs, amounts of depreciation and gains were as follows:

Year	No. Parcels	Selling Price	Cost	Depreciation	Gain
1942	5	$10,300.00	$ 7,599.17	$ 977.00	$ 3,677 83
1943	2*	5,600.00	4,300.97	30.00	1,329.03
1944	1	1,850.00	1,625.00	235.12	460.12
1945	21	48,950.00	29,512.80	7,746.25	27,183.45
1946	12	29,696.80	21,244.70	2,351.25	11,803.35
1947	13	51,650.00	23,661.59	3,931.25	31,919.36
1948	5	18,316.66	6,257.78	660.00	12,718.88

* The two sales involved property on Skinner Road sold to J. P. Norris, and property at 420 Sand Bar Ferry Road sold to Mrs. S. Pollard.

Each of the parcels referred to in this paragraph had been held by the petitioner for more than six months at the date it was sold. Some of the parcels were improved and some were unimproved. Each of the parcels that had a house on it had been rented before it was sold. In most every case of the sale of these properties, the purchaser or a relative of the purchaser approached the petitioner with an offer to purchase the property. The petitioner sometimes paid a commission on such sales to persons who were not real estate agents. He sold to anyone who wanted to buy. He sometimes sold without receiving a down payment.

The petitioner was engaged in the business of buying and selling real estate. All the real estate sold

by him was property held by him primarily for sale to customers in the ordinary course of that business.

In his income tax returns the petitioner reported very few sales of real estate or gains thereon. He reported sales and gain or loss as follows:

Year	No. Sales	Gain or (Loss)
1941	None	None
1942	2	$(107.00)
1943	2*	1.75
1944	1	None
1945	None	None
1946	None	None
1947	(No Return Filed)	
1948	9	645.93

* The sales reported were of a brick house at a reported gain of $4.15 and a farm at a loss of $1.40. The return does not refer to the sales in 1943, hereinabove mentioned, to J. P. Norris and Mrs. S. Pollard.

On his return for the year 1942, the petitioner showed two sales. One sale resulted in a gain and the other in a loss. The sale resulting in a gain involved property at 822 Chaffee Avenue which was reported by the petitioner at a gain of $250. The cost of this property was $2,250 and the selling price was $2,500. The petitioner took back a security deed on this sale in the amount of $1,000, which was satisfied in 1944. The gains on the sales made in 1948 were reported on the installment basis. The gross profit on the 1948 sales was shown in a schedule attached to the return in the amount of $15,983.35.

Among the properties sold by the petitioner, the security deeds covering which were satisfied during the years in question before us were: 1111 Emmett Street, sold in 1945, security deed satisfied in 1946; 412 Sand Bar Ferry, sold in 1945, security deed satisfied in 1946; property in Brookside sold to Truluck in 1945, security deed satisfied in 1946; property in Forest Place sold to Crapps in 1946, security deed satisfied in 1948; property in Druid Hills sold to J. R. Richardson in 1945, security deed satisfied in 1947; 520 Tuttle Street sold to Copeland in 1944, security deed satisfied in 1947; property in Druid Hills sold to B. Richardson in 1945, security deed satisfied in 1947; and property in Brookside sold to Jolley in 1946, security deed satisfied in 1947. The petitioner filed no return for 1947. The returns for 1946 and 1948 do not include any amount as gain upon the sales of properties, the security deeds for which were satisfied in those years. Nor do such returns show that any amount received by the petitioner in payment of those security deeds was reported as interest.

The amounts of taxable interest shown by the petitioner on his returns were as follows:

Year	Interest Shown on Returns
1941	$ 187.00
1942	156.48
1943	90.00
1944	*202.00
1945	*712.50
1946	60.00
1947	No Ret. Filed
1948	9,096.99

*Dividends and interest.

The petitioner does not have complete records of the houses that he owned in the taxable years. In each year for which he filed an income tax return he claimed deductions for depreciation on buildings at rates ranging from two to three per cent. The returns do not set forth any figures which purport to show the costs of the depreciable properties. They set forth as to each property a figure denominated as "total value" of land and improvements, which is then separated into two figures, one for land and the other for buildings, and depreciation is computed on the latter figure.

The stipulated accumulated amounts of depreciation on the petitioner's properties at the close of each year by counties in which the properties were located, were as follows:

Year	Richmond County	Jefferson County	Aiken County	Richmond County (Sand Bar Ferry Rd.)
1940	$ 7,888.32	$ 720.00	$3,976.42	—
1941	8,804.02	780.00	5,305.47	—
1942	9,673.72	840.00	5,394.82	$ 360.00
1943	10,657.09	900.00	6,449.19	1,080.00
1944	11,761.13	960.00	7,503.56	1,960.00
1945	7,271.00	1,020.00	4,012.74	2,840.00
1946	5,429.53	1,080.00	2,989.25	3,160.00
1947	5,652.31	1,140.00	853.92	880.00
1948	5,406.01	1,200.00	950.59	—

On his sales of real estate the petitioner received from the purchasers security deeds to secure notes for the unpaid portion of the purchase price. The notes

bore interest at varying rates from five per cent to eight per cent. At the close of each of the years listed below the petitioner owned security deeds acquired in connection with real estate sales in the several counties listed in the numbers and face amounts as follows:

Year	Aiken No.	Aiken County	Richmond No.	Richmond County	Jefferson No.	Jefferson County	Totals
1940	0	—	1	$ 1,926.00	1	$ 425.00	$ 2,351.00
1941	0	—	1	1,710.00	1	425.00	2,135.00
1942	2	$ 3,438.62	1	1,000.00	1	425.00	4,863.62
1943	2	3,307.54	2	3,132.97	0	—	6,440.51
1944	2	3,130.70	2	3,456.45	0	—	6,587.15
1945	15	29,330.67	8	14,464.97	0	—	43,795.64
1946	17	32,056.18	13	26,744.30	1	107.00	58,907.48
1947	16	27,854.72	31	99,600.56	1	107.00	127,562.28
1948	15	25,325.87	39	140,574.05	0	—	165,899.92

Some of the above security deeds were on property in the Sand Bar Ferry tract. That tract was outside of the city limits and the houses built thereon were not subject to the city building code. They were sub-standard in construction and materials. They did not have footings, and such pillars as they had consisted of concrete blocks, some without mortar, and were not at the bearing points. The floor joists and rafters were two feet apart. The window and door frames were not mill-made, but were made out of whatever lumber was handy. The window sashes were of an obsolete type, with the upper pane stationary; they had no weights or balances. The houses had no baths or other sanitary facilities. The streets in the area were unpaved, and there were no street lights.

No real estate firm in Augusta has ever sold any of the petitioner's houses in the Sand Bar Ferry Road area. The houses could not qualify for F.H.A. loans. Savings and loan associations would not make improvement loans on the properties, and returned the fees that were paid with applications for loans. The occupants of the properties were in low-income brackets. The houses were sold at prices in excess of their fair market values. The purchasers were willing to agree to the selling prices because the down payments were low and in some cases no down payment was required. The purchasers were interested primarily in the amount of the monthly payments.

Houses owned by the petitioner in Augusta, Georgia, some of which he sold in the taxable years, and on which he took back security deeds, for the most part were also of sub-standard construction. Some of them had been built 50 or 60 years ago to rent at $15 to $20 per month. Some of the properties were badly run down. Some were rented at monthly rentals of from $4 to $7. The petitioner's properties, generally, were properties that were hard to finance.

The security deeds held by the petitioner on properties that were sold by him had a fair market value of 70 per cent of their face amounts.

The petitioner owned other security deeds, given to secure debts owed to him which were not the result of real estate sales, on real estate in the counties listed, in the numbers and amounts as follows:

Year	Aiken No.	Aiken County	Richmond No.	Richmond County	Jefferson No.	Jefferson County	Burke No.	Burke County
1940	1	$1,250.90	2	$ 315.00	2	$615.80	1	$500.00
1941	6	2,075.00	4	1,790.00	2	615.80	1	500.00
1942	4	650.00	2	915.00	—	—	1	500.00
1943	2	395.00	1	800.00	—	—	—	—
1944	—	—	2	950.00	—	—	—	—
1945	2	1,000.00	3	1,250.00	—	—	—	—
1946	5	5,310.74	6	6,486.88	—	—	—	—
1947	2	7,474.59	5	3,280.93	—	—	—	—
1948	2	6,985.20	4	2,279.44	—	—	—	—

The petitioner's mother and a daughter owned security deeds on property in the counties listed below in the face amounts shown which deeds were recorded in the name of the petitioner:

Year	Aiken County	Richmond County	Jefferson County
1940	—	—	$675.00
1941	$1,219.35	$2,000.00	675.00
1942	700.00	4,706.75	—
1943	1,118.00	4,841.75	—
1944	154.00	6,306.75	—
1945	315.00	6,011.75	—
1946	800.00	3,121.75	—
1947	800.00	3,031.75	—
1948	800.00	3,680.00	—

The face amounts of these deeds were treated by the respondent as assets of he petitioner in determining the net worth of the petitioner They were not the property of the petitioner and are not included in the amounts we have set out in the preceding paragraphs as property of the petitioner.

At the close of each year there were loans owing to the petitioner other than loans on security deeds in numbers and amounts as follows:

Year	Nos.	Amount
1940	9	$2,048.56
1941	6	823.56
1942	5	608.56
1943	4	424.26
1944	4	610.00
1945	3	358.00
1946	2	953.00
1947	—	—
1948	—	—

In the years 1940, 1941 and 1942, the petitioner's only investment in securities was the amount of $1,020.50 in Salisbury, North Carolina, notes or warrants. In 1943 his total investments amounted to $1,311.25 which consisted of the same amount in Salisbury, North Carolina, notes as in prior years, $272.00 in Georgia Railroad Banking & Trust Co. stock and $18.75 in a United States Government bond. In 1944 he had the same investments as in 1943 plus the amount of $400.00 in the note of an individual. His investments in securities in the years 1945 to 1948, inclusive, were as follows:

	1945	1946	1947	1948
Georgia Power Company ...			6,626.50	6,626.50
Georgia Power Company ...			2,513.50	2,513.50
Georgia Power Company ...			1,035.00	1,035.00
Georgia Power Company ...			1,145.00	1,145.00
Georgia Power Company ...			2,295.00	2,295.00
Georgia Power Company ...				114.25

	1945	1946	1947	1948
Ga. RR Banking & Trust Co.	272.00	272.00	272.00	272.00
American Tel. & Tel.				306.00
American Tel. & Tel.	815.00	815.00	315.00	815.00
American Tel. & Tel.	3,270.00	3,270.00	3,270.00	3,270.00
Salisbury, N. C.	1,020.50	1,020.50	1,020.50	1,020.50
John P. King Mfg. Co.	380.00	380.00		
H. H. Claussons Sons, Inc. 5% Pfd			500.00	500.00
Castleberry Foods 5 ½%			500.00	500.00
Bibb Mfg. Co. Com.	1,190.00	1,190.00		
Detroit Edison Com.				1,025.00
U. S. Govt. Savings Bond ..	18.75	18.75	18.75	18.75
Boston Edison Company ...	803.56	803.56	803.56	803.56
Savannah-Augustine Gas Co.	700.00			
South Atlantic Gas Co.		700.00	700.00	700.00
South Atlantic Gas Co.		324.00	324.00	324.00
South Atlantic Gas Co.			252.00	252.00

	1945	1946	1947	1948
(Note)	400.00	400.00	400.00	400.00
M. B. Norris				—
M. B. Norris (Note)	1,500.00	1,500.00	1,500.00	1,500.00
	10,369.81	10,693.81	23,990.81	26,436.06

The petitioner handled and invested funds of his mother and sister. He rendered detailed accounts to both his mother and sister for moneys of theirs that he handled and for funds that he expended in their behalf. He accounted for items as small as ten cents. The petitioner did not furnish any of the funds that he invested in securities for his mother and sister, although some of the securities were listed in the petitioner's name.

The petitioner's mother and sister had investments in securities in total amounts as follows:

Mother		Sister	
Year	Amount	Year	Amount
1940	$ 1,983.90	1940	—
1941	1,983.90	1941	—
1942	500.00	1942	—
1943	4,089.50	1943	—
1944	4,497.50	1944	$ 765.00
1945	9,536.50	1945	1,248.64
1946	14,592.75	1946	1,248.64
1947	13,582.75	1947	1,514.14
1948	14,786.75	1948	1,514.14

These amounts were treated by the respondent as assets of the petitioner in his determination of the deficiencies. They were not the property of the peti-

tioner and are not included in the amounts we have set forth above as investments of the petitioner.

At the close of each of the following years balances in the petitioner's bank accounts in banks in Augusta were as follows:

Year	C & S Bank Augusta [1]	Ga. RR Bank & Trust Company [2]	C & S Bank Augusta—Personal [3]
1940	$ 61.25	$ 207.63	$142.24
1941	36.41	1,613.27	—
1942	38.96	269.52	—
1943	38.96	510.27	—
1944	38.96	344.05	—
1945	243.06	442.17	—
1946	550.93	617.67	—
1947	1,082.91	760.77	—
1948	2,379.74	1,221.59	—

[1] Citizens & Southern National Bank.

[2] Georgia Railroad Bank & Trust Company.

[3] Citizens & Southern National Bank—Personal Checking Account.

At the close of each year the petitioner was indebted on notes payable as follows:

Year	C & S Bank Augusta	Ga. Railroad Bank Augusta	Others	Total
1940	$1,721.45	$ 506.25	$ 800.00	$ 3,027.70
1941	405.06	3,594.39	600.00	4,599.45
1942	1,316.37	1,468.26	4,350.00	7,134.63
1943	—	1,518.75	—	1,518.75
1944	2,019.00	6,325.83	1,800.00	10,145.73
1945	1,275.00	1,761.46	—	3,036.46
1946	5,522.92	6,869.00	—	12,391.92
1947	2,025.00	2,025.00	—	4,050.00
1948	—	—	—	—

At the close of the years 1946, 1947 and 1948 the petitioner had outstanding accounts payable for building supplies as follows:

1946	$ 2,832.18
1947	2,861.08
1948	3,923.72

The petitioner from time to time submitted statements of his financial condition to the Citizens & Southern National Bank for credit purposes. Each report purports to show the petitioner's assets and liabilities in considerable detail. The following statement of his condition as of December 31, 1944, is typical of all of them:

This statement is made for the purpose of obtaining credit.

1943	Real estate owned, less one piece sold. $83,950.00 less $500.00	$ 83,450.00
1944	new real estate added	16,150.00
	Loans of real estate	9,780.00
	Stocks and bonds at cost (Old)	521.00
	Central R.R. and Banking Co. Bonds	975.00
	Loans on gold and silver made before 1940	906.00
	Wholesale watch material for resale Estimated	150.00
	Gold coins held as relics	100.00
	New loans on gold made in 1943	140.00
	Cash on hand and in banks and checks	919.00
	Lumber and plumbing supplies bought before the war for keeping up real estate estimated	1,000.00
	Total assets	$114,091.00
	Mules, feed, cows, wagon, auto, truck, tools, not listed:	
	Total liabilities	$ 8,900.00
	Net worth	$105,191.00
	Net worth one year ago	94,862.26
	Net gain for one year	10,328.00
	The real estate above is listed at cost some is old and some is new. Hence, my idea of depreciations is now ..	10,000.00
	After Depreciation	328.00

The pertinent figures from other financial statements in the taxable period are as follows:

Dec. 31	Cast	Mortgage Loans	Real Estate	Total Assets
1940	$ 314.88	$ 8,960.96	$61,929.00	$ 73,112.60
1941	1,860.27	8,001.96	65,087.18	76,816.17
1942	130.00	7,633.50	75,177.00	87,177.02
1943	1,342.25	8,009.26	83,950.00	97,612.26
1945	—	53,089.00	69,313.00	141,886.50
1946	751.93	101,461.00	53,713.00	182,810.43
1947	500.00	50,000.00	21,805.00	96,062.00
1948	800.00	51,000.00	21,805.00	97,362.00

Dec. 31	Liabilities	Net Worth
1940	$ 3,150.00	$ 69,962.60
1941	3,850.00	72,966.17
1942	5,375.00	76,802.02a
1943	3,750.00	81,862.26b
1945	2,450.00	139,436.50
1946	72,900.00c	109,910.00
1947	4,500.00	91,562.00
1948	4,000.00	93,362.00

The financial statements did not include any assets inherited by the petitioner from his father.

The petitioner's father died intestate in 1929. The father's estate consisted of three store properties in Wrens, Georgia, the home place—which was a farm —one or two other pieces of land or interests in land,

a After deduction of $5,000 for depreciation.
b After deduction of $12,000 for depreciation.
c Including $60,000 reserve for losses.

some county warrants, and perhaps a negligible amount of cash. The estate was never formally appraised and there were no probate proceedings. In the distribution of the estate the home place was acquired by the petitioner's mother. The petitioner, his sister and his mother each received one of the stores in Wrens, and the county warrants were divided amont the three. The value of the petitioner's share of his father's estate was about $14,000 or $14,500. The store acquired by the petitioner from his father's estate was rented beginning in 1943 for $12.50 per month. The rental increased gradully over a nine-year period to $25 per month.

The first income tax return filed by the petitioner was for the year 1939. That return was prepared by a certified public accountant whose services were engaged by the petitioner, and for which services he paid a fee. When the petitioner learned that he could obtain free assistance from Government employees in the preparation of his returns he went to them for aid in preparing his returns for the years 1940 to 1946. Schedules attached to the returns, on which were listed some items of income, and detailed statements of deductions claimed, including depreciation on individual rental properties, were prepared by the petitioner. The petitioner did not furnish any invoices to the persons who assisted him in preparing his returns.

In June 1947, the petitioner had conferences with revenue agents who were investigating his 1944 income tax return. At that time, and with the petitioner's consent, the agents made an inventory of the peti-

tioner's safe deposit box in the Citizens & Southern Bank, and also an inventory of a safe deposit box in the joint names of the petitioner, his mother and his sister in the Georgia Railroad Bank & Trust Company. The agents also inventoried the contents of a safe in the petitioner's home. The boxes and the safe contained several coins, a deed pertaining to the division of some land and a few stock certificates.

At the time of his conferences with the revenue agents in 1947, the petitioner employed an accountant in Augusta to help him in the matter of the investigation of his 1944 income tax return. The accountant requested that the petitioner bring in his records, and was advised by the petitioner that the revenue agents had his records. When it came time to prepare an income tax return for 1947, the petitioner advised the accountant that revenue agents had his records and that he could not file a 1947 return. The petitioner did not furnish the accountant with records which would permit the preparation of a return for 1947.

The only information ever furnished to the accountant as to the petitioner's 1947 income consisted of a few figures set forth in a letter dated September 24, 1949, as to rents collected, an amount stated to be total expenses and a depreciation schedule worked out in connection with the 1948 return.

The petitioner's 1948 income tax returns was prepared in the office of the accountant whom the petitioner had engaged with respect to his 1944 return.

It was the petitioner's practice to make notes of financial transactions on slips or scraps of paper and later transcribe them into books. The books were paper-backed note books or composition books. The petitioner intended to keep one book for each calendar year, but some of the books contain entries pertaining to more than one year. The books were not kept in any consistent manner. Five such books were introduced in evidence. One of them contains nothing but notes and figures as to sales of real estate. Another contains what appear to be amounts received monthly as rentals, receipts of interest or dividends, and a list of amounts designated as "Water Bills" without further identification. Another contains notes as to sales of real estate and dividends and interest received. Some entries are not dated and those that are dated are not all in chronological order. Entries with respect to sales of houses show the sale price of the property, the amount of the down payment, the amount of security deed given by the purchaser and the monthly payments made by the purchaser. In most instances the cost of the property is not shown. Amounts designated as material and labor are shown as monthly aggregates without further identification. None of the petitioner's record books contains a complete list of income and deductions for any year. The petitioner does not keep canceled checks.

Upon request of the revenue agents for records of income and expenses, the petitioner in June 1947, furnished them with three of his notebooks, one of which purports to contain records of sales from 1943 to 1945, another bore the caption "Income Tax Book—1944," and the third has written on the cover "1946 to ....." Two of the three books are in evidence

and contain entries concerning sales of numerous parcels of real estate. The entries include the name of the purchaser, the street name and house number of the property, the amount of the loan and payments made by the purchaser. In some instances a cost figure is shown; in others it is not. The book captioned "Income Tax Book—1944" is not in evidence. The agents made a transcript of the books and returned them to the petitioner on January 30, 1948. The petitioner informed the revenue agents that he had no records other than the books he gave to them.

The petitioner and his wife were married in 1918. They have two daughters. One of the daughters was married prior to the taxable years, but lived with the petitioner a short time during the war. The other daughter was born in 1929 and was claimed as a dependent on the petitioner's income tax returns for the years 1941 to 1946, inclusive. She was married in about 1950.

The petitioner is a man of considerable frugality. His wife cuts his hair; only once in the past 25 years has he patronized a barber shop. He sharpens his razor blades and only uses about two a year. He obtains his shoes and hats from among the discards left by people who vacate his houses. He obtains his suits by sharing with his son-in-law the cost of suits on occasions when a dealer offers two suits for the price of one plus $1.00. He obtains milk and butter from two cows that he owns and pastures on his land. His wife makes underwear for him out of used material. Calves are butchered and the meat is canned. The petitioner has a garden which supplies

fresh vegetables in the growing season and vegetables are canned for winter use. The petitioner's only non-utilitarian expenditure is for corn cob pipes and tobacco, both of which he buys at wholesale. One of his daughters attended college and earned the funds for that purpose; the petitioner did not pay for her education.

The petitioner's cash expenditures for living expenses for himself and family averaged about $1,000 per year in the taxable period.

In his returns the petitioner reported income (net or gross) as follows:

Year	Amount on Returns	
1941	$ 1,426.03	net income
1942	2,390.80	net income
1943	2,060.91	net income
1944	4,754.05	gross income
1945	4,171.70	gross income
1946	1,596.01	gross income
1947	—	no return filed
1948	12,019.79	net income

The respondent determined the petitioner's net income on the net worth basis. The following tabulation shows his determination of assets, liabilities and net worth

at the end of each year and the increase in net worth in each year:

Year	Assets	Liabilities	Net Worth	Increase in Net Worth
1940	$ 67,062.58	$13,782.02	$ 53,280.56	—
1941	76,746.73	17,127.29	59,619.44	$ 6,338.88
1942	95,419.89	21,057.21	74,362.58	14,743.14
1943	106,504.81	17,950.12	88,554.69	14,192.11
1944	123,213.46	29,128.45	94,085.01	5,530.32
1945	153,786.08	15,849.31	137,936.77	43,851.76
1946	196,706.54	20,803.76	175,902.78	37,966.01
1947	238,225.70	11,079.84	227,145.86	51,243.08
1948	273,468.72	6,808.84	266,659.88	39,514.02

The respondent in computing taxable net income eliminated as non-taxable income the amounts of $77.37 for 1942, $7.50 for 1945 and $589.08 for 1947. He allowed as deductions contributions for the years 1941, 1942 and 1943 the respective amounts of $197, $200, and $190. He allowed the standard deduction of $500 for each of the years 1944, 1945, 1946 and 1947, and the standard deduction of $1,000 for 1948.

In accordance with the findings herein, which, in some respects modify the respondent's determinations, the correct amounts of the petitioner's assets, including security deeds in connection with sales of real estate at a value of 70 per cent of face amounts, his liabilities (including depreciation as stipulated), net worth at the end of each year and increase in net worth for the taxable years are as follows:

Year	Assets	Liabilities	Net Worth	Increase in Net Worth
1940	$ 73,060.62	$15,612.44	$ 57,448.18	—
1941	79,222.98	19,488.94	59,734.04	2,285.86
1942	95,039.34	23,403.17	71,636.17	11,902.13
1943	101,566.90	20,605.03	80,961.87	9,325.70
1944	118,751.5C	32,330.42	86,421.14	5,459.27
1945	127,668.51	18,180.20	109,488.31	23,067.17
1946	161,815.83	27,882.88	133,932.95	24,444.64
1947	174,573.05	15,437.31	159,135.74	25,202.79
1948	206,987.52	11,480.32	195,507.20	36,371.46

The petitioner's net income for the taxable years determind by adding to the increases in his net worth the amount of his living expenses and allowing as deductions the amounts determined by the respondent as representing nontaxable income and allowable deductions is as follows:

Year	Net Income
1941	$ 3,088.66
1942	12,624.76
1943	10,135.70
1944	5,959.27
1945	23,559.67
1946	25,944.64
1947	25,113.71
1948	36,371.46

The increases in net worth, plus living expenses and less nontaxable income, represent realized income that was properly to be included in gross income and only a part of which was reported in the returns that were filed.

In his declarations of estimated income tax the petitioner reported estimates as follows:

Year		Amount
1943	Income and Victory Tax ..	$145.36
1944	Income Tax	695.28
1945	Income Tax	216.72
1946	Income Tax	120.00
1947	None Filed	
1948	None Filed	

Eighty per cent of the tax for each of the years 1943, 1946, 1947 and 1948 exceeds the estimated tax for each of those years.

The returns for the years 1941 and 1944 were not false or fraudulent with intent to evade tax. The returns for the years 1942, 1943, 1945 and 1946 were false or fraudulent with intent to evade tax. Some part of the deficiency for each of the years 1942, 1943, 1945 and 1946 is due to fraud with intent to evade tax. No part of the deficiencies for the years 1947 and 1948 is due to fraud with intent to evade tax.

Opinion.

Use of Net Worth Method.

Atkins, Judge: The respondent has determined income, and consequent deficiencies, on the basis of increases in the petitioner's net worth plus estimated living expenses and less small amounts of nontaxable income, contributions for some years and the standard deduction for the years 1946, 1947 and 1948. We have set out in the findings some of the facts

concerning the state of the petitioner's records. Bluntly stated, he had almost none, and the few that he had were not adequate for a complete or accurate calculation of his income. The only records which might be considered of a permanent nature consist of paper-backed composition books for only some of the years under review and many of the notations in those are of no value in determining the amount of income realized in any year. While of little evidentiary value in determining the amount of income, they do indicate the receipt of substantial sums as payments on properties sold and support the respondent's position that more income was realized than was reported. The petitioner did not keep canceled checks. He has not produced any receipts or cost records as to his numerous properties. The record shows that the respondent's agents requested the petitioner to produce records and so did the accountant whom he engaged in connection with the investigation of his 1944 return, and all that he ever produced were the composition books which are wholly inadequate for the purpose of computing income. In this situation the respondent was justified in attempting to reconstruct income by use of the net worth method. Althohgh the petitioner's records may have been adequate for his business purposes, they obviously did not record many of the items of income realized from ownership and dealings in real estate. Holland v. United States, 348 U.S. 121. In our findings of fact we have set forth tabulations of properties sold by the petitioner in the various years, as established by the record. The record does not support a finding that these were all the sales of property. Schedules submitted in evidence by the respondent in explanation of his determination contain many additional pur-

chases and sales as to which the petitioner has offered no evidence. In our view the use of the net worth method by the respondent was fully justified as a test of the accuracy of the petitioner's income tax returns and also as evidence of his correct net income. Carmack v. Commissioner (C.A. 5), 183 F. 2d 1, affirming a decision of this Court; Harris v. Commissioner (C.A. 4), 174 F. 2d 70, affirming a decision of this Court; Frank Imburgia, 22 T.C. 1002.

Opening Net Worth.

The necessity of determining, with reasonable certainty, an opening net worth to serve as a starting point for the calculation of increases in net worth is too well established to require elaborate discussion. Holland v. United States, supra.

The respondent determined that the petitioner's net worth at the beginning of 1941 amounted to $53,280.56. This net sum was the difference between assets in the amount of $67,062.58 and liabilities of $13,782.02. The petitioner attacks this determination on a number of grounds, including alleged failure to include in assets all cash on hand, inclusion of assets that were owned by other members of the petitioner's family, and inclusion of security deeds at face amount rather than at their value. Some of the petitioner's attacks on the respondent's determination are made with reference to later years and these will be noticed as we go along. At the moment we are concerned only with facts as to the opening net worth for 1941—the first taxable year before us.

The only cash items used by the respondent consisted of the amounts in the two bank accounts in the aggregate amount of $268.85. Documentary evidence

establishes that the petitioner had three bank accounts in 1940 in which the balances aggregated $411.12. We have so found. But the petitioner claims that he had much more than this amount of cash on hand at the beginning of the taxable period. He says that he had $20,000 or $22,000 in paper currency in sealed glass jars that were buried in the woods at places known only to him. Appearing as a witness for himself, he testified as to sealing the jars with hot asphalt, donning hunter's clothing, burying the jars a specified distance from marked trees, and obscuring the marks of interment by burning litter which he used to heat canned food that he consumed on the spot. It is the petitioner's contention that his ownership of this much cash at the beginning of 1941 is corroborated by the fact that in 1942 and 1943 he expended respectively $18,000 and $6,000 in constructing houses. This does not, in our opinion, corroborate his story. The cash used for such construction need not necessarily have been on hand at the beginning of 1941. It may have been acquired from other sources during 1941, 1942 and 1943. The petitioner also makes the contention that there is some corroboration to his story in the statement which he made on a financial statement given to a bank that he could pay up all that he owed in a few hours during any business day. He stated that by this he meant that he could go and get the money from the ground. However, to us it does not seem logical that the petitioner, who was known for his inclination to economize, being known as "Little Tight," would be borrowing money from the bank and paying interest if he had large sums buried. The evidence shows that in 1941 he owed banks about $4,000. We are unable to give credence to the petitioner's testimony that he had this

amount of cash buried and we refrain from making any findings of fact concerning it. His story is not corroborated. Carmack v. Commissioner, supra, Frank Imburgia, supra. In this connection, we have taken into consideration all the evidence bearing upon the probability of the ability of the petitioner to accumulate such an amount of cash as of the beginning of the taxable year 1941. The only revealed regular source of any substantial income was salary from the petitioner's employment as a watchmaker. His salary range was $55 to $70 a week. However, he worked on a part-time basis in the later years. Thus, his return for 1941 shows an average income from salary of about $47 per week. Assuming that over the period 1918 to 1940 his average income from salary was $50 per week and assuming that his living expenses were no more than $600 per year, his accumulated savings could not have been much more than $40,000. Against this figure, the evidence shows that he had purchased up to the end of 1940 property at a cost in excess of $60,000. This would have absorbed all the income from salary and more, and we are not informed as to other possible sources of the claimed cash on hand. Some point is made of his inheritance of a part of his father's estate in 1929. The amount of that inheritance the petitioner places at about $14,000 or $15,000, and it consisted of real estate, county warrants and cash. Although the petitioner says that he received some cash from his father's estate, he has no recollection of what amount it was, not even in round figures. His sister, who took an equal share of the father's estate, does not remember receiving any money other than from the county warrants that were in the estate. Two banks in which the father had deposits could not pay de-

positors. Had there been any sizeable sum of cash in the father's estate, certainly the petitioner or his sister could be expected to give at least an approximate figure. In the nebulous state of the evidence the only finding that we have been able to make is that the cash in the father's estate, if any, was a relatively small sum.

On the record before us we cannot find that at the beginning of the taxable period the petitioner had any cash other than that contained in his bank deposits.

Increases in Net Worth.

Because of the petitioner's failure to supply the examining agents with the data that they requested, the agents resorted to other sources of information, including land records, in order to reconstruct his income. This was entirely proper. See Harris v. Commissioner, supra, in which it was pointed out that the repeated comparison of opening and closing net worth over a series of years lessened the chance of error that is inherent in net worth computations of income.

The evidence discloses that here, as in Harris, supra, there were some errors in the respondent's reconstruction, most of which stem from the petitioner's failure to produce evidence prior to the trial of the case. Where credible evidence was produced at the trial or the facts stipulated, we have corrected the respondent's determinations with the results that are set out in the findings of fact.

Assets.

In the net worth computation prepared by the respondent there were included as assets of the petitioner on hand at the end of the various years a number of security deeds which were in the name of the petitioner but which the petitioner testified belonged to his mother and his daughter and which were purchased by him for them with money furnished to him by them. The respondent on brief contends that there has been no proper showing that these belonged to the mother and daughter. We have carefully combed the voluminous record, including various exhibits which might bear upon this subject, and have found that the notations on bank records and the petitioner's statements of account with his mother corroborate his testimony as to ghe greater part of these security deeds. We have concluded from the whole record that none of these security deeds which he claims belonged to his mother and daughter did belong to him and have eliminated them from his assets in our reconstruction of his net worth.

In the net worth statement prepared by the respondent there were included numerous investments in securities held at the end of the various years. The petitioner contends that the respondent erroneously included therein many securities which belonged to his mother and his sister. The petitioner submitted in evidence a list of the various securities owned by his mother and sister and testified that none of these securities ever belonged to him. Here again we have meticulously checked the record against his testimony and find corroboration of such testimony in the petitioner's records of account with his mother and the broker's accounts. We are satisfied that these se-

curities were not owned by the petitioner and we have so found in our findings of fact. Proper adjustment has been made in our reconstruction of the petitioner's net worth.

The amount of loans payable to the petitioner, other than on security deeds, have been stipulated in the amounts found in the facts and these amounts have been used in the reconstruction in place of those used by the respondent in his determination.

Although the petitioner's books do not contain a complete record of the cost of the various properties and his returns did not contain such information, the parties have agreed upon most of the cost figures and such agreed cost figures have been found in the findings of fact. Where the costs have not been shown we have used the figures used by the respondent in determining the deficiencies. There are a few instances in which the parties are in disagreement. One of these concerns a property listed in the exhibits as 400-402 Sand Bar Ferry Road. The house at that address had been constructed in 1942 at a cost of $2,000. It was sold in 1947 for a consideration which the revenue stamps on the deed indicated to be $6,000. The purchaser gave back a security deed in the amount of $5,700. Within the year 1947 the premises were deeded back to the petitioner for a nominal consideration, the petitioner apparently surrendering the security deed. The next day the purchaser acquired from the petitioner another property for a recited nominal consideration and gave back a security deed in the face amount of $4,700. The respondent has included the property at 400-402 Sand Bar Ferry Road in the petitioner's assets for the year 1947 at a cost of $5,700. The petitioner contends that this property should not be included at a greater amount than

$2,000. We agree with the petitioner. For the purpose of determining the increase in the petitioner's net worth it would be a distortion to include the same house, under the circumstances, at a different figure at the beginning and the end of the year. We have used a cost of $2,000 for this property in determining the petitioner's net worth for the year 1947.

Another controversy relates to the cost of land on Sand Bar Ferry Road on hand at the end of the years 1946, 1947 and 1948. The amounts for which the petitioner contends are somewhat higher than those urged by the respondent and which were used in the notice of deficiency. Since there is no proof of the actual cost of these properties, the figures used by the respondent in his computation of net worth are approved and in the summary of the values of the properties in our findings of fact we have used the same figures for the properties as used by the respondent, namely, $4,326.00, $2,447.88 and $1,900.96 for the years 1946, 1947 and 1948, respectively.

A further difference between the parties relates to the cost of houses on hand at the end of 1946. The respondent in the computation of the deficiency included among the properties owned by the petitioner at December 31, 1946, properties in Richmond County either constructed or in process of construction in the Sand Bar Ferry Road tract at a figure of $30,000. This was in addition to certain other properties in that county which we have found had a cost of $31,244.29 and also in addition to other houses on the Sand Bar Ferry Road tract at a cost of $18,000. The petitioner contests the inclusion of this $30,000 account and at the hearing much of the interrogation had to do with how this figure was computed. From a careful consideration of such testimony, we cannot

conclude that the Commissioner acted arbitrarily in including this amount. We know from the record that in 1947 and 1948 there were sales of at least 15 houses in this county which had been constructed for sale and it is not unreasonable to assume that much of this property was on hand at December 31, 1946. The revenue agent testified that he did the best he could in attempting to fix this amount by referring to the public records, financial satements given by the petitioner to banks and by discussions with the petitioner. He concluded that there were at least 15 houses, the cost of construction of which would be about $4,000 each, but that he discounted the full cost because some of the houses might not have been completed. In discussing it with the petitioner, the revenue agent testified, he peitioner inerposed no objection to the calculation. While it is true that there is no detailed showing as o all of the houses on hand or when they were constructed, there is no evidence to show that the respondent's determination is unreasonable. The petitioner, who presumably would know what houses were on hand and when they were constructed, did not offer any evidence whatsoever to assist the Court in arriving at a conclusion upon this question. We accordingly approve the respondent's determination in this respect and have found as a fact that this amount of $30,000 should be included among the properties owned by the petitioner at December 31, 1946. As to the year 1947 the respondent asks for a finding that at the close of the year the petitioner had invested the sum of $12,000 in construction in progress and houses finished for sale. In our reconstruction of net worth for 1947 we have included in assets the amount of $10,500 as cost of houses constructed for rent and for sale. The petitioner's ex-

hibits and the testimony and stipulation with regard thereto establish that figure as proper.

The greatest difference between the parties, in dollar amounts, has to do with the amount at which the petitioner's security deeds should be included for the purpose of determining net worth. The respondent has included them at their face amounts. The petitioner contends that they should not be included at any greater amount than 30 per cent of face value. The petitioner produced as witnesses real estate men who testified generally that the houses were of very poor construction, that th purchasers of the houses were not of the responsible type, that the agreed selling prices were in excess of the fair market values of the properties since the purchasers were more intrstd in th size of the down payment and the monthly payments than in the fixed selling price, that lending institutions did not care to make loans on this type of property and that the most that could be borrowed on property of this type would be about 30 per cent of its value. From this the opinion testimony was to the effect that the security deeds had a value of only 30 per cent of their face amounts. We are satisfied that the houses were sold in excess of their fair market values and that the security deeds taken back were not worth 100 per cent of face. The parties apparently are agreed that it is proper to include the security deeds at fair market value, and we see no reason to disagree. After all, the ultimate aim of this proceeding is to determine the petitioner's correct tax liability, the amount of which depends upon the amount of his net income. Lacking the records which should be kept and used for the determination of net income, the increase in net worth method is used only because the increase presumably stems from

the receipt of taxable income. The increase of net worth "is merely evidence of income," Estate of W. D. Bartlett, 22 T.C. 1228 and care must be exercised to confine the use of the method so as to reflect as nearly as possible all items of taxable income but at the same time to exclude those which do not represent income. Section 111(b) of the Internal Revenue Code of 1939 provides that the amount realized on a sale is the sum of any money received "plus the fair market value of the property (other than money) received" for the property sold. While, as stated, we disagree with the respondent's inclusion of the security deeds at 100 per cent of face value, we do not agree with the petitioner that their fair market value was as low as 30 per cent of face. We have carefully compiled and examined such evidence as we have relating to the properties sold. In some instances the property was sold with no down payment or with a small down payment. In other instances substantial down payments were made. The value of a security deed obviously will vary according to the value of the underlying property. The value of the properties would represent varying percentages of the face amount of the deeds. The petitioner's witnesses testified as to their opinion of the values of the various properties sold and in those instances in which we know the amount of the security deed, we have compared the amount of such deed with the opinion evidence as to the value of the realty. We find that the average of the values of the real estate stated by the witnesses represents over 56 per cent of the face amount of the security deeds. We fail to see how the security deeds could be considered as having a value less than the actual fair market value of the security behind them and believe that they are worth considerably more.

From the record it seems apparent that in most instances the petitioner received down payments and subsequent installment payments, although there were some repossessions. The petitioner's evidence, magr as it is, shows that within the years in which sales were made he received substantial collections on the sales. Taking into consideration all the evidence, it is our best judgment and we have found as a fact, that the security deeds taken back by the petitioner upon the sale of properties had an average fair market value of 70 per cent of their face amounts. We have included them at that percentage in our reconstruction of the petitioner's net worth.

The foregoing discussion relates to the security deeds received by the petitioner in connection with sales of real estate. He also owned other security deeds to secure debts not the result of real estate sales. There is no detailed evidence in the record concerning the petitioner's acquisition of these security deeds or as to the security behind them. For all we know the petitioner may have loaned the full face amounts of these deeds and their cost may be represented by such face amounts. In any event, for lack of evidence to the contrary, we have included these security deds in the recomputation of net worth at face amounts.

Liabilities.

The petitioner contends that in determining his liabilities as of December 31, 1946, 1947 and 1948 the respondent erred in not taking into consideration an amount which he owed to a person by the name of E. R. Senn. He testified that on April 3, 1946, he

borrowed $55,000 from Senn and then on May 10, 1947, he borrowed an additional $30,000 from Senn. He placed in evidence notes in those amounts bearing those dates and payable four years and two years, respectively, after those dates to Senn, bearing four per cent interest. Both notes bear undated face indorsements which read, "Paid—E. R. Senn." The petitioner testified that E. R. Senn was a friend whom he had known for years and who lived in Augusta, Georgia, in one room in a rooming house; that such rooming house had now been torn down; that he had met Senn through a mutual acquaintance, who had died before the time of the hearing; that Senn was retired; that he did not know where Senn got his money; that Senn had no family in Augusta; that he did not know where Senn kept his money, but that he didn't keep it in banks because he did not like banks; that the money which he borrowed from Senn was carried by Senn in a suitcase in 10 and 20 dollar bills; that they counted the money in a pine thicket in the woods where no one would bother them; that he buried the money he received; that he gave Senn no collateral or security; that he did not pay interest on the notes; that for a time he hid the $30,000 under some building supplies in a shop near his house, before burying it; that after the $30,000 loan Senn went to Florida to live; that in 1950 he sold some securities, dug up some money and repaid Senn $31,000; that this repayment took place in Miami at a rooming house, the address of which the petitioner does not remember; that Senn never wrote him letters, but that he knew where Senn lived in Miami because he told him where he was going before he left; that Senn marked the two notes paid and the petitioner gave him a new note for $54,000; and that he paid the remainder off to Senn in 1953 or 1954.

This testimony of the petitioner is wholly uncorroborated. The petitioner did not bring Senn to the hearing of this case nor did he explain why he did not. Nor was any witness produced who had known Senn. There is no indication in any of the petitioner's records or in his financial statements to the banks that he owed this amount. Considering the relative size of this item and its importance to the petitioner's contention it would seem that if he had borrowed this large amount from Senn he would have produced him as a witness or shown efforts to produce him. In our opinion the testimony is so improbable that we have not considered it as a valid foundation for any findings of fact. Carmack v. Commissioner, supra. We have not used the alleged Senn transactions in any way in arriving at the petitioner's net worth.

The amounts that we have found as the petitioner's indebtedness on notes and accumulated depreciation are the amounts set out in joint exhibits filed at the trial. Although there was some controversy as to accounts payable at the close of the years 1946, 1947 and 1948 we are satisfied that the petitioner owed the amounts shown in exhibits introduced by him at the hearing and have so found in the findings of fact.

Living Expenses.

In his determination of deficiencies the respondent used the figure of $2,000 as representing the amount of the petitioner's living expenses for each of the years 1941 to 1944, inclusive, $2,500 for each of the years 1945 and 1946, and $3,000 for each of the years 1947 and 1948. He added those amounts to his determined increases in net worth for the several years.

On brief, he contends that the same amounts should be used in the reconstruction. The petitioner contends that those figures are too high and refers us to his testimony as to his frugal habits and his estimate of living expenses in the amount of $500 or $600 a year.

We have set out in the findings some of the record facts as to the petitioner's frugality. Giving full credence to his testimony on this point, we cannot but believe that he underestimated the total of the living costs of himself and his family. Throughout the period 1941 to 1946 he claimed three exemptions in his returns—one each for himself, his wife and his daughter, Betty. For the year 1948 he claimed exemptions for himself and his wife. We find it difficult to believe that a family of this size, living in or near a city, spent only $500 or $600 a year for living expenses. The estimate of the petitioner does not stand the test of analysis. He allowed his wife $20 a month for clothing and his grocery bill he estimated at $4 to $5 per week. Those two items would amount to close to $500 a year. And, of course, he must have incurred some costs for utilities, maintenance of his residence, feed for his cows, perhaps medical expenses and other personal items. Exercising our best judgment upon the record, we conclude and have found as a fact that the sum of $1,000 per year is a reasonable allowance for living expenses and we have used that amount in the reconstruction of the petitioner's income.

Capital Gains.

The petitioner contends that 58 parcels of property sold in the years 1942 to 1948, inclusive, were rental properties which had been held for more than six months, that depreciation had been allowed thereon,

that therefore the gains derived from the sales thereof should be treated as long-term capital gains under section 117(j) of the Internal Revenue Code of 1939,[1] rather than as ordinary income, and that 50 per cent of such gains should be excluded from taxable income.

[1] Section 117(j) provides in part:

(1) Definition of Property Used in the Trade or Business.—For the purposes of this subsection, the term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l), held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business * * *

(2) General Rule.—If, during the taxable year, the recognized gains upon sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion * * * of property used in the trade or business and capital assets held for more than 6 months into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 6 months. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchange of capital assets.

We think there can be no doubt that the petitioner was in the business of selling real estate. In fact, he admittedly constructed many houses for sale. His real estate activities over a long period of years included the purchase and sale of improved and unimproved lands, the purchase and subdivision of vacant land, the construction of houses thereon and the rental and sale of those houses, and the purchase of improved properties and the rental and sale thereof. We note the continuity, numbers, frequency and substantiality of sales of real estate as distinguished from isolated transactions. The fact that the petitioner did not employ an agent or otherwise affirmatively engage in a selling campaign is not decisive. Oliver v. Commissioner (C.A. 4), 138 F. 2d 910, affirming a decision of this Court; Gruver v. Commissioner (C.A. 4), 142 F. 2d 363, affirming 1 T.C. 1204; Mauldin v Commissioner (C.A. 10), 195 F. 2d 714, affirming 16 T.C. 698.

The precise question presented here by the petitioner is whether the particular properties referred to by him constituted properties which were at the time of sale thereof, held primarily for sale to customers in the ordinary course of that business. The respondent's denial of capital gain treatment presumably rests on a correct determination of the facts and the burden is upon the petitioner to establish error in that determination. Alice E. Cohn, 21 T.C. 90, affd. (C.A. 9), 226 F. 2d 22. There is no single test which may be applied in determining whether property sold was at the time of sale held primarily for sale to customers in the ordinary course of business. The determination depends upon all the background and

circumstances. Alice E. Cohn, supra; Consolidated Naval Stores Co. v. Fahs (C.A. 5), 227 F. 2d 923. This is essentially a factual question. Winnick v. Commissioner (C.A. 6), 223 F. 2d 266, affirming 21 T.C. 1029; Alice E. Cohn, supra, and cited cases therein. While the purpose for which property was acquired is a factor to be considered, the ultimate question is the purpose for which the property was held at the time of sale. Richards v. Commissioner (C.A. 9), 81 F. 2d 369, affirming 30 B.T.A. 1131; Rollingwood Corporation v. Commissioner (C.A. 9), 190 F. 2d 263, affirming a decision of this Court. Even though the taxpayer may continue to rent property pending sale, this does not in itself indicate that the property at the time was not held primarily for sale to customers. Rollingwood v. Commissioner, supra.

These particular properties to which the petitioner refers were sold over a period of years during which sales of other properties were being made and during which the petitioner was also acquiring additional property. The petitioner constructed at least 23 other houses for sale and sold 20 of them in the years 1946, 1947 and 1948. Schedules submitted by the respondent in explanation of his determination indicate many other purchases and sales of property throughout the taxable years before us, and as to those the petitioner has introduced no evidence. The 58 properties in question were not, as in the case of D. L. Phillips, 24 T.C. 435, confined to a particular area clearly identified for investment. The properties the petitioner sold were scattered over a rather wide area. For instance, some were on Chaffee Avenue, some were in the Druid Hills subdivision and some were in the Sand Bar Ferry Road tract. Nor is there [illegible]

showing here, as in the Phillips case, that the petitioner refused any offers to purchase the properties. On the contrary, it is shown that the petitioner was willing to sell any of his property to anyone who wanted to buy. Some of his testimony as to the properties with which we are here concerned was as follows:

Q. Mr. Anderson, will you tell us under what conditions you sold this property?

A. Just sell it to anyone that wanted to buy it, if he had any money. Sometimes I sold it without any money.

Q. Did you solicit them or did they solicit you?

A. Most every case they come to me or their brother-in-law or sister, some family connection.

Q. That is, somebody in the neighborhood wanted a relative or friend to move in the neighborhood?

A. Sometimes I paid a commission to somebody outside of the agent. He said, "I will sell that house if you give me fifty dollars." But he was not an agent. He was sometimes a brother-in-law.

In the light of the petitioner's testimony, together with the record as a whole, we cannot find that any of the properties, even though they may have been acquired originally for rental purposes, were not held primarily for sale to customers at the time they were sold. We are not persuaded that in the years in which the 58 pieces of property were sold they were held for any different purpose than other properties which were being sold in that period. In the years in question his primary object seems to have been that of selling his properties at a profit. There is no evidence here that the petitioner had segregated properties for the definite purpose of holding them for investment

and that he had embarked on a program of liquidation thereof such as has been held in some cases to require a holding of capital gain upon the sale of rental properties. We have examined the cases cited by the petitioner but find that they are not governing in the circumstances which we find present in the instant case. In Goldberg v. Commissioner (C.A. 5), 223 F. 2d 709, reversing 22 T.C. 533, the Court found that the taxpayer had not been in the business of selling real estate, but rather in the business of holding real estate for investment and that sales of such property within a comparatively short time constituted a liquidation of the rental business. The Court there recognized that if an owner was contemporaneously, or soon before or after, buying or selling other property on his own account as a dealer, appellate Courts have found that such evidence supports factual findings resulting in the denial of capital gain benefits with respect to the rental properties sold.

Not only has the petitioner failed to show error on the part of the respondent, but we think the evidence establishes as a fact, and we have so found, that all the real estate sold by the petitioner was property held by him primarily for sale to customers in the ordinary course of his business. Accordingly, in our reconstruction of the petitioner's taxable income under the net worth method we have not made any adjustment on account of claimed long-term capital gains.

Installment Basis.

In his return for the year 1948 the petitioner computed and reported income from the sales of nine parcels of real estate on the installment basis. He contends that the initial payments do not exceed 30

per cent of the selling price and that he is therefore entitled to use the installment basis under the provisions of section 44(b) of the Internal Revenue Code of 1939. The respondent, on the other hand, in computing the deficiency refused to allow the reporting of this income on the installment basis.

Section 44(b) provides that:

In the case * * * of a sale or other disposition of real property, if * * * the initial payments do not exceed 30 per centum of the selling price * * * the income may, under regulations prescribed by the Commissioner with the approval of the Secretary, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

The basis and manner prescribed in that section is to return as income in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

Section 29.44-2 of Regulations 111, provides:

* * * The term "initial payments" contempates at least one other payment in addition to the initial payment. If the entire purchase price is to be paid in a lump sum in a later year, there being no payment during the first year, the income may not be re-

turned on the installment basis. Income may not be returned on the installment basis where no payment in cash or property, other than evidences of indebtedness of the purhcaser, is received during the first year, the purchaser having promised to make two or more payments in later years.

Although the installment plan for reporting profits does not depend upon any prescribed method of bookkeeping or accounting, it is necessary that the accounts kept by the petitioner permit a correct determination of tax liability by the installment method. Acme Lumber Co., 25 B.T.A. 403. As stated hereinabove, in connection with the net worth method issue, the records of the petitioner are inadequate to establish the amount of income under any method of accounting. They do not contain complete data as to cost of properties or payments received. Furthermore, the petitioner has not presented evidence to show that all the requirements set forth in the regulations have been met in the case of the nine sales in question. The respondent having determined that the petitioner is not entitled to use the installment method of accounting, the burden is upon the petitioner to clearly show that he is entitled to us that method and thus postpone the taxation of income. We hold that the petitioner has failed to show that he is entitled to the use of the installment method for the nine parcels for the year 1948.

Fraud Issue.

For each of the years 1941 to 1948, inclusive, the respondent has made 50 per cent additions to the deficiencies computed by him, asserting that some part of each deficiency is due to fraud with intent to evade

tax. Section 293(b), Internal Revenue Code of 1939.[2] For the years 1941 to 1946, inclusive, the respondent alleges that the returns were false and fraudulent with intent to evade tax and that therefore the statute of limitations does not bar assessment for the years 1941, 1942 and 1943 as contended by the petitioner. Section 276(a), Internal Revenue Code of 1939.[3]

In any proceeding involving the issue of whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof is upon the respondent. Section 1112, Internal Revenue Code of 1939. And the fraud must be proved by clear and convincing evidence. Frank Imburgia, supra. However, in determining whether the respondent has established fraud on the part of the petitioner we may consider the entire record and are not limited to respondent's affirmative evidence on the fraud issue. Frank Imburgia, supra; Wallace H. Petit, 10 T.C. 1253; L. Schepp Co., 25 B.T.A. 418

[2] Sec. 293. Additions to the Tax in Case of Deficiency.

* * * * * * *

(b) Fraud.—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d)(2).

[3] Sec. 276. Same—Exceptions.

(a) False Return or no Return. In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in Court for the collector of such tax may be begun without assessment, at any time.

Our reconstruction of the petitioner's net worth discloses that there was in each of the years 1941 to 1946, inclusive, unreported taxable income in substantial amounts. The amounts of income (net or gross) shown by the petitioner on his returns for those years and the amounts of net income resulting from our reconstruction of net worth are as follows:

Year	Amount on Returns	Correct Amount of Net Income
1941	$1,426.03 net income	$ 3,088.61
1942	2,390.80 net income	12,624.76
1943	2,060.91 net income	10,135.70
1944	4,754.05 gross income	5,959.27
1945	4,171.70 gross income	23,559.67
1946	1,596.01 gross income	25,944.64

The principal reason for the respondent's assertion that the petitioner has been guilty of fraud is his failure to return any profits on the sales of real estate. So far as we are informed by the record there were no sales of real estate in the year 1941 and we know of only one sale in 1944 and the petitioner made reference to that sale in his return for that year. While the amount of face value of security deeds and other debts owing to the petitioner would seem to indicate that the petitioner should have returned more interest in those years, the respondent makes no point of this and we are without evidence as to the precise amount of the interest actually received. Under the circumstances the respondent has failed to prove by clear and convincing evidence that the return for 1941 was false or fraudulent with intent to evade tax and accordingly the statute of limitations bars assessment of any deficiency for that year. He has also

failed to show that any part of the deficiency for 1944 was due to fraud with intent to evade tax and there is no basis for the assertion of a 50 per cent addition to the deficiency.

The evidence shows that there were five sales in 1942 at a profit. In that year the petitioner accounted for one sale but not the others. In 1943 there were at least two sales at a profit for which the petitioner did not account in his return. For that year he did refer in his return to two sales, one at a slight profit and one at a loss, but made no reference to the other two which were made at a profit. During 1945 and 1946 the petitioner sold 37 pieces of property at a profit and in his returns for those years made no reference to them.

The petitioner states that his reason for not returning profit upon the sales in the various years was because he thought he was entitled to recover his cost, apparently in cash, before he was required to report any profit. He also refers to the fact that there was no ready market for such deeds and that if he could dispose of them it would be at a large discount. Without more we might very well conclude that the petitioner's explanation is plausible and that his failure to return profits on the sales was not induced by an intent to fraudulently evade taxes. However, we find that the petitioner's conduct was not consistent with the view that he acted in good faith in failing to report his gains. The evidence shows that on his return for the year 1942 the petitioner showed two sales at a net loss of $107. One sale was reported as resulting in a gain and the other in a loss. The sale resulting in a gain involved property at 822 Chaffee Avenue which was reported by the petitioner at a gain of $250. The cost of this property was $2,250 and the selling price was $2,500. The petitioner took back

a security deed on this sale in the amount of $1,000, which was satisfied in 1944. Thus, it is quite apparent that in 1942 the petitioner recognized that gain on sales is taxable before cash is received in an amount equal to the basis of the property sold. Yet in that very year, as pointed out above, he failed to report gains on other sales. Furthermore, if the petitioner were sincere in his contention, he would be expected, on his theory, to report any gain on a particular sale at such time as the cost was recovered. His returns for the years before us fail to show any instance in which he has carried through and reported gain on sales made in prior years. At the same time we have ascertained from the evidence of record that in a number of instances security deeds were satisfied within the taxable years under review and in those instances the petitioner did not make a final accounting of the transactions in his returns for the years in which the security deeds were satisfied. Examples are sale of 1111 Emmett Street in 1945—security deed satisfied in 1946; sale of 412 Sand Bar Ferry Road in 1945—security deed satisfied in 1946; sale to Truluck in Brookside in 1945—security deed satisfied in 1946; and sale to Crapps in Forest Place in 1946—security deed satisfied in 1948.

The petitioner testified that some of his returns were prepared with the assistance of representatives of the Internal Revenue Service. He said that he read figures off a sheet of paper and was prepared to give any information desired. He said he signed his returns thus prepared without reading them. This, of course, cannot excuse the petitioner from filing proper returns.

The petitioner is a man of intelligence and large business experience. He obviously is a very keen busi-

nessman and undoubtedly knew, either from memory or by notations which he kept, whether and when he made profits. We know from such records as he had that he was meticulous in his accounting with his mother, even accounting for items as low as ten cents. We do not believe that his failure to return the profits in the years of sale or in later years when the security deeds were satisfied was due to ignorance or oversight. Certainly we would expect him to know that interest which he collected from year to year upon his security deeds constituted income at the time collected or at least when the security deeds were finally satisfied. The security deeds bore interest at rates ranging from five per cent to eight per cent. Interest computed at five per cent on the security deeds which the petitioner had outstanding would run far in excess of the small amounts of interest shown on his returns. There is no indication in any of his returns that upon satisfiaction of the security deeds any portion of the amount received was returned as interest.

Under all the circumstances of this case we are forced to the conclusion that for the years 1942, 1943, 1945 and 1946 some portion of each deficiency in tax was due to fraud with intent to evade tax and that the returns filed for those years were false or fraudulent with intent to evade tax. We accordingly hold that the petitioner is liable for an additional amount of 50 per cent of any deficiency for those years resulting from our opinion herein. We also hold that the statute of limitations does not bar assessment and collection of the deficiencies and additions thereto for any of such years.

The petitioner filed no return for the year 1947. At the time for filing his return for 1947 his returns for

prior years were under investigation. He had discussions with an accountant and testified to the effect that he thought he had made arrangements to have a return filed for the year and left the matter in the hands of his accountant. Under these circumstances we are not convinced that the petitioner's failure to file a return was due to an intent to evade tax. We hold that the respondent has failed to show that any part of the deficiency for that year was due to fraud with intent to evade tax and accordingly do not approve the additional 50 per cent of the deficiency for that year. For the year 1948 the petitioner did obtain the services of an accountant and apparently attempted to file a proper return. He showed his sales of property and reported interest of over $9,000. As to that year also we hold that the respondent has failed to show that any part of the deficiency is due to fraud with intent to evade tax and we therefore disapprove the 50 per cent addition to the deficiency for that year.

Addition to tax under section 291(a).

For the year 1947 the respondent has added to the tax 25 per cent thereof because of the petitioner's failure to file a return for that year. Section 291(a) of the 1939 Code provides that where there is a failure to file a timely return a percentage of the tax shall be added, graduated to a maximum of 25 per cent, "unless it is shown that such failure is due to reasonable cause and not due to willful neglect * * *."

The petitioner has never filed an income tax return for the year 1947. By way of extenuation the petitioner alleges that he engaged the services of an accountant to prepare his 1947 return; also that revenue

agents were in possession of his records at the time the 1947 return was due to be filed so that the filing of an accurate return would have been impossible.

The record leaves us in doubt as to the extent of the services that were to be rendered by the accountant who was employed by the petitioner. The accountant's services were engaged by the petitioner in 1947 in connection with the petitioner's 1944 return that was then under investigation by revenue agents. The accountant testified that he was not engaged to prepare and file a return for the year 1947. Even if the accountant was engaged to prepare a 1947 return, the petitioner cannot escape the consequences of the failure to file in view of his failure to furnish the accountant with data which would serve as the basis for preparation of a return. The accountant testified that he was never furnished with records upon which he could prepare a return for 1947. There is in evidence a letter from the petitioner to the accountant, dated September 24, 1949, in which the petitioner refers to having left records with the accountant early in January 1948. However, the evidence shows, and the petitioner testified, that at that time his records were in the possession of the revenue agents. Those records were returned to th petitioner on January 30, 1948. We are satisfied from the evidence that the petitioner did not furnish sufficient information to the accountant to permit the preparation of a return for the year 1947. The few figures given in the petitioner's letter of September 24, 1949, were far from sufficient. Cases which excuse late or non-filing of returns because of reliance on others are predicated on the fact of furnishing of complete information to the adviser upon whom reliance is placed. Hatfried, Inc. v. Commissioner (C.A. 3), 162 F. 2d 628. Here the

petitioner did not furnish his accountant with the necessary facts to permit the filing of a return. As no reasonable cause is shown for the failure to file a return, the imposition of the addition is sustained. see Tarbox Corporation, 6 T.C. 35, Calvert Iron Works, Inc., 26 T.C. ... (June 29, 1956).

Additions under subsection (d)(1)(A) and (d)(2) of section 294 of the 1939 Code.

By amendment to answers the respondent seeks to add to the tax the additional amount provided for in section 294(d)(1)(A) for the years 1947 and 1948 (he abandoned such claim as to the year 1943) and to add to the tax for each of the years 1943, 1946, 1947 and 1948 the additional amount imposed by section 294(d)(2) of the 1939 Code.

Section 294(d)(1)(A) provides for an additional amount in the case of a failure to make and file a timely declaration of estimated tax, unless such failure is due to reasonable cause and not to willful neglect. The burden of proof upon this issue is upon the respondent since it is new matter pleaded in his answer. Rule 32, Rules of Practice of this Court. The only thing that the respondent has shown is that the petitioner did not file the declarations of estimated tax for the years 1947 and 1948. The delinquency may have been due to reasonable cause for all that is shown on the record. We find that the respondent has not borne his burden of proof and that there is no justification for the assertion of the additions to the tax under section 294(d)(1)(A) of the 1939 Code for failure to file declarations for those years. See Bruner Woolen Co., Inc., 6 B.T.A. 881.

Section 294(d)(2) provides for an addition to the tax in the event 80 per cent of the correct tax liability exceeds the estimated tax. The statute does not provide for any extenuating circumstances. (H. R. Smith, 20 T.C. 663.) Here 80 per cent of the tax as recomputed in accordance with this opinion will exceed the estimated tax and accordingly the additions under section 294(d)(2) will apply. Where no declaration has been filed, as is the situation here for the years 1947 and 1948, we have held that the amount of the estimated tax is to be considered as zero for the purpose of computing the amount of the addition. G. E. Fuller, 20 T.C. 308 (affd. without discussion of this point, 213 F. 2d 102); Harry Hartley, 23 T.C. 353 and 23 T.C. 564.

For the year 1943 the respondent alternatively requests an increase in the deficiency in the event we decide that the petitioner is not liable for an addition for fraud for the year 1942 The claim for such addition is made under section 6 of the Current Tax Payment Act of 1943. That section, as the respondent recognizes, does not apply where additions to the tax for 1942 "are applicable by reason of fraud." As we have sustained the respondent's determination that a part of the deficiency for 1942 is due to fraud, the claimed increase for 1943 under the Current Tax Payment Act may not be made.

Decisions will be entered under Rule 50.

DECISION.

The Tax Court of the United States.
Washington.

Lewis Thurston Anderson and Clyde Velma Anderson,
Petitioner,
v. Docket No. 35385.
Commissioner of Internal Revenue, Respondent.

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed July 31, 1956, the respondent herein, on December 11, 1956, filed a recomputation for entry of decision and the petitioners herein having noted their acquiescence thereon, it is

Ordered and Decided: That there is a deficiency in income tax for the taxable year 1948 in the amount of $8,423.90, an addition to tax under section 294(d)(2), Internal Revenue Code of 1939, in the amount of $630.45, and that there are no additions to tax under sections 293(b) and 294(d)(1)(A), Internal Revenue Code of 1939.

(Signed) CRAIG S. ATKINS,
(Seal) Judge.

Entered Dec. 13, 1956.

DECISION.

The Tax Court of the United States.
Washington.

Lewis Thurston Anderson Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed July 31, 1956, the respondent herein, on December 11, 1956, filed a recomputation for entry of decision and the petitioner herein having noted his acquiescence thereon, it is

Ordered and Decided: That there are deficiencies in income tax and additions to tax for the taxable years 1941 to 1947, inclusive, as follows:

Additions to Tax, Internal Revenue Code of 1939

Year	Income Tax	Sec. 291 (a)	Sec. 293 (b)	Sec. 294 (d)(1)(A)	Sec. 294 (d)(2)
1941	None	None	None	None	None
1942	$ 2,865.01	None	$ 1,432.51	None	None
1943	2,262.91	None	1,131.46	None	$ 133.64
1944	434.19	None	None	None	None
1945	8,552.10	None	4,276.05	None	None
1946	9,331.22	None	4,665.61	None	547.88
1947	8,829.84	$ 2,207.46	None	None	529.79

(Signed) CRAIG S. ATKINS,
(Seal) Judge.

Entered Dec. 13, 1956.

STIPULATION.

Filed Feb. 26, 1957.

The Tax Court of the United States.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective undersigned attorneys, that the decision of the Tax Court of the United States in said cause, dated December 13, 1956 and redetermining deficiencies in income taxes and penalties against the above named petitioner for the Calendar Year 1947 may be reviewed by the United States Court of Appeals for the Fifth Circuit.

This agreement is made pursuant to the provisions of Section 7482(b)(2) of the Internal Revenue Code of 1954 (26 U.S.C.A. 7482(b)(2).

This 21st day of January, 1957.

(S.) L. EUGENE McNATT,
Attorney for Petitioner.

(S.) CHARLES K. RICE,
Assistant Attorney General Attorney for Respondent.

PETITION FOR REVIEW.

Filed Feb. 26, 1957.

In the United States Court of Appeals for the Fifth Circuit.

Lewis Thurston Anderson and Clyde Velma Anderson, Petitioners,

v. Docket 35385.

Commissioner of Internal Revenue, Respondent.

Lewis Thurston Anderson and Clyde Velma Anderson, the petitioners herein, hereby file their petition for a review by the United States Court of Appeals for the Fifth Circuit of the decision of the Tax Court of the United States determining deficiencies in petitioners' income taxes and penalties as follows:

Year	Income Tax	Underestimate Section 294(d)(2)
1948	$8,423.90	$630.45

Which decision was rendered and entered on December 13, 1956 in cause Numbered 35385 on the Docket of the Tax Court of the United States.

I.

Jurisdiction.

Petitioners are citizens of the United States and reside in Augusta, Georgia. Their income tax return for the Calendar Year 1948 was filed with the Collector of Internal Revenue for the District of Georgia.

II.

Nature of the Controversy.

The controversy involves the proper determination of the petitioners' liability for income taxes and underestimate penalties for the Calendar Year 1948, based upon a reconstruction of income on the so-called net worth expenditure basis.

The respondent determined taxes and penalties in the amount of $18,541.83. The petitioners appealed the respondent's determination and the Tax Court redetermined the deficiencies to be $9,054.35.

The case involves the correctness of the Tax Court findings of net worth, whether petitioners are entitled to capital gains, whether petitioners are entitled to report real estate sales on the installment basis, the valuation of notes receivable, and whether the underestimate penalty is applicable where the failure to file a Declaration of Estimated Tax was due to reasonable cause. It is the contention of the petitioners that the Tax Court made large errors in its determination which are detailed under assignment of error, infra.

III.

Request for Review.

The petitioners being aggrieved by the findings of fact and conclusions of law as set forth in said findings and opinion of the Court, and by its decision entered pursuant thereto, desire a review thereof by the United States Court of Appeals for the Fifth Circuit.

IV.

Assignment of Error.

The petitioners assign as error the following acts and omissions of the Tax Court of the United States:

1. The Court erred in ordering, finding and deciding that petitioners are subject to additional income taxes and underestimate penalty for the Calendar Year 1948 in the amounts of $8,423.90 and $630.45 respectively.

2. The Court erred in concluding from the evidence that petitioners' assets, liabilities, net worth, net worth increase and net income were as follows:

Year	Assets	Liabilities	Net Worth	Increase in Net Worth	Net Income
1948	$206,987.52	$11,480.32	$195,507.20	$36,371.46	$36,371.46

3. The Court erred in concluding from the evidence that Petitioners' net worth increased in the amounts set forth in assignment No. 2 above, and specifically found, contrary to a clear preponderance of the evidence that:

(a) Petitioners had no cash on hand at the beginning of the year; and

(b) Petitioners were not indebted to E. R. Senn at the end of the year; and

(c) That security deeds had a fair market value of 70% of their face; and

(d) That construction in progress was the amount determined.

4. The Court erred in finding that all properties sold by petitioners were held for sale to customers in the ordinary course of business and not subject to the capital gains provisions.

5. The agents of respondent were guilty of recklessness, carelessness and gross negligence in computing petitioners' income to such an extent that the respondent's determinations are arbitrary and lose their presumption of correctness.

6. The Court erred in denying petitioners the installment basis of reporting real estate sales.

7. The Court erred in concluding that the 6% penalty for underestimating taxes was applicable where no declaration was filed and the failure to file was due to reasonable cause.

8. The facts found by the Court in its "Findings of Fact" on the above assigned errors are against a clear preponderance and not based upon any substantial evidence.

Wherefore, petitioners pray that the Honorable United States Court of Appeals for the Fifth Circuit review the findings, opinion and decision of the Tax Court and reverse and set aside the same.

L. EUGENE McNATT,
(L. Eugene McNatt).

45 Eighth Street, N. E.,
Atlanta 9, Georgia.

Georgia
Fulton County.

Before me, the undersigned Notary Public, personally appeared L. Eugene McNatt, who being duly sworn deposes and says that he is the attorney of record in the above named cause; that he prepared the foregoing petition for review; that he is familiar with the statements contained therein; that the statements are true to the best of his knowledge and belief; and that said petition is not filed for the purpose of delay.

This 15th day of February, 1957.

WILLIE M. TOYE,
(Seal) Notary Public, Fulton County, Georgia.

My Commission Expires Nov. 19, 1960.

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Filed Feb. 26, 1957.

In the United States Court of Appeals for the Fifth Circuit.

Lewis Thurston Anderson and Clyde Velma Anderson, Petitioners,

v. Docket No. 35385.

Commissioner of Internal Revenue, Respondent.

To: Acting Chief Counsel
Internal Revenue Service
Washington, D. C.

Honorable Charles K. Rice
Assistant Attorney General
Washington, D. C.

Pursuant to Rule 37(e) of the Rules of the United States Court of Appeals for the Fifth Circuit, you are hereby notified that a petition for review of the decision of the Tax Court of the United States entered on December 13, 1956, on the above styled case has been filed and a copy of the petition is attached hereto.

This the 22 day of February, 1957.

L. EUGENE McNATT,
(L. Eugene McNatt).
Attorney for Petitioners.

45 Eighth Street, N.E.,
Atlanta 9, Georgia.

Certificate of Service.

I do hereby certify that the foregoing Notice of Appeal, with a copy of the petition for review attached thereto, has been served on the opposite parties mentioned above by mailing a copy to each of them, correctly addressed and with sufficient postage affixed thereto.

This 22 day of February, 1957.

L. EUGENE McNATT,
(L. Eugene McNatt).

PETITION FOR REVIEW.

Filed Feb. 26, 1957.

In the United States Court of Appeals for the Fifth Circuit.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Lewis Thurston Anderson, the petitioner herein, hereby files his petition for a review by the United States Court of Appeals for the Fifth Circuit of the decision of the Tax Court of the United States determining deficiencies in petitioner's income taxes and penalties thereon in the amounts indicated for each of the following years:

Year	Income Tax	Delinquency Section 291(a)	Fraud Section 293(b)	Underestimate Section 294(d)(2)
1942	$ 2,865.01	$ —	$ 1,432.51	$ —
1943	2,262.91	—	1,131.46	133.64
1944	434.19	—	—	—
1945	8,552.10	—	4,276.05	—
1946	9,331.22	—	4,665.61	547.88
1947	8,829.84	2,207.46	--	529.79

which decision was rendered and entered on December 13, 1956 in cause Numbered 35386 on the Docket of the Tax Court of the United States.

Jurisdiction.

Petitioner is a citizen of the United States and resides in Augusta, Georgia. Income tax returns for the years 1942 through 1946 were filed with the Collector of Internal Revenue for the District of Georgia. No return was filed for the year 1947. Jurisdiction of this Circuit for 1947 is invoked by an agreement in writing signed by the attorneys for the petitioner and respondent pursuant to Section 7482(b)(2) of the Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 7482 (b)(2)).

II.

Nature of the Controversy.

The controversy involves petitioner's liability for income taxes for the years 1942 through 1947, the fraud penalty for 1942, 1943, 1945 and 1946, the delinquency penalty for 1947 and underestimate penalty for the years 1943, 1946 and 1947.

The respondent computed petitioner's income on the so-called net worth expenditure method and from this computation determined taxes and penalties of $130,453.54. The Tax Court redetermined the taxes and penalties to be $47,199.67 and that fraud removed the bar of the statute of limitations for 1942 and 1943.

It is the contention of the petitioner that Tax Court's findings of fact and conclusions of law are clearly erroneous and stated in general terms, the principal erroneous finding contended by petitioner are as follows:

1. Liability for Penalties.

2. The statute of limitations.

3. The amount of petitioner's net worth.

4. The fair market value of notes receivable.

5. Rental property was held for sale to customers in the regular course of business.

6. Section 6 of the current tax payment act of 1943 was inapplicable for 1942 because of fraud.

7. Erroneous admission of evidence.

III.

Request for Review.

The petitioner being aggrieved by the findings of fact and conclusions of law as set forth in said findings and opinion of the Court, and by its decision entered pursuant thereto, desires a review thereof by the United States Court of Appeals for the Fifth Circuit.

IV.

Assignment of Error.

The petition assigns as error the following Acts and omissions of the Tax Court of the United States:

1. The Court's ordering, finding and deciding that petitioner is subject to additional income taxes and penalties as set forth below as clearly erroneous:

Year	Income Tax	25% Delinquency Penalty	50% Fraud Penalty	6% Underestimate Penalty
1942	$ 2,865.01	$ —	$ 1,432.51	$ —
1943	2,262.91	—	1,131.46	133.64
1944	434.19	—	—	—
1945	8,552.10	—	4,276.05	—
1946	9,331.22	—	4,665.61	547.88
1947	8,829.84	2,207.46	—	529.79

2. The Court's conclusions from the evidence that petitioner's assets, liabilities, net worth, net worth increases and net income as set out below were clearly erroneous:

Year	Assets	Liabilities	Net Worth	Increase in Net Worth	Net Income
1940	$ 73,060.62	$15,612.44	$ 57,488.18	$ —	$ —
1941	79,222.98	19,488.94	59,734.04	2,285.86	3,088.66
1942	95,039.34	23,403.17	71,636.17	11,902.13	12,624.76
1943	101,566.90	20,605.03	80,961.87	9,325.70	10,135.70
1944	118,751.56	32,330.42	86,421.14	5,949.27	5,959.27
1945	127,668.51	18,180.20	109,488.31	23,067.17	23,559.67
1946	161,815.83	27,882.88	133,932.95	24,444.64	25,944.64
1947	174,573.05	15,437.31	159,135.74	25,202.79	25,113.71

3. The Court's finding from the evidence that the assets, liabilities, net worth, increases in net worth and net income was in the amounts set forth in assignment of error No. 2 were clearly erroneous as to the following facts found:

(a) Based on the Court's findings of individual facts, the assets aggregate $95,336.84 as against the Court's conclusion that the assets total $95,039.34 for 1942.

(b) Based on the Court's findings of individual facts, the assets aggregate $161,998.61 as against the Court's conclusion that the assets total $161,815.83 for 1946.

(c) Based on the Court's findings of individual facts, the assets aggregate $175,121.39 as against the Court's conclusion that the assets total $174,573.05 for 1947.

(d) Based on the Court's findings of individual facts, the liabilities aggregate $20,623.03 as against the Court's conclusion that the liabilities total $20,605.03 for 1943.

(e) Based on the Court's findings of individual facts, exclusive of the errors in (b) above, the net income for 1946 is $24,944.64 as against the Court's conclusion that the income was $25,944.64.

(f) Petitioner had no cash on hand at the beginning of the period.

(g) Petitioner was not indebted to E. R. Seen at the end of any year.

(h) Security deeds had a fair market value of 70% of their face.

(i) Construction in progress was $30,000.00 at the end of 1946.

4. The Court's findings, that rental property sold was held for sale in the regular course of business and not subject to the capital gains provisions was clearly erroneous as to the following properties:

5 sales in 1942

2 sales in 1943

1 sale in 1944

21 sales in 1945

11 sales in 1946

13 sales in 1947

These are the properties detailed in petitioner's Exhibit 18.

5. The Court's finding that respondent established fraud, for the years and in the amounts set out below, by clear and convincing evidence was clearly erroneous:

1942	$ 1,432.51
1943	1,131.46
1945	4,276.05
1946	4,665.61

6. The Court's finding that respondent established fraud by clear and convincing evidence and consequently Section 6 (Forgiveness) of the Current Tax Payable Act of 1943 was inapplicable was clearly erroneous.

7. The Court's finding that respondent established fraud for 1942 by clear and convincing evidence and consequently it removed the bar of the statute of limitations was clearly erroneous.

8. The Court's finding that respondent established fraud for 1943 by clear and convincing evidence and consequently that it removed the bar of the statute of limitations was clearly erroneous.

9. The Court's finding that the failure to file a return for 1947 was due to willful neglect rather than to reasonable cause was clearly erroneous.

10. The Court's finding that the 6% underestimate penalty was applicable for the years set out below was clearly erroneous.

1943	$	133.64
1946		547.88
1947		529.79

11. The Court's failure to find that the 6% penalties set forth in assignment of error No. 10 was barred by the statute of limitations was clearly erroneous.

12. The agents of respondent were so guilty of gross negligence, recklessness and carelessness in computing petitioner's income that their determinations are so arbitrary that they lose their presumption of correctness and the Court's findings of a deficiency on the basis that petitioner failed to carry the burden of proof was clearly erroneous.

13. The facts found by the Court in its "Findings of Fact" on the above assigned errors on which the petitioner had the burden of proof are against the clear preponderance of the evidence introduced by the petitioner and are therefore clearly erroneous.

14. The facts found by the Court in its "Findings of Fact" on which the respondent had the burden of proof are neither clear nor convincing nor are they based upon any substantial evidence and are therefore clearly erroneous.

15. The erroneous admission of evidence over objections as will more fully appear from the transcript of the proceedings.

Wherefore, Petitioner prays that the Honorable United States Court of Appeal for the Fifth Circuit, review the findings, opinion and decision of the Tax Court and reverse and set aside the same.

L. EUGENE McNATT,
(L. Eugene McNatt).

Of Counsel:
CUBA, CUBA & McNATT,
45 Eighth Street, N.E.,
Atlanta 9, Georgia.

Georgia,
Fulton County.

Before me, the undersigned Notary Public, personally appeared L. Eugene McNatt, who being duly sworn deposes and says that he is the attorney of record in the above named cause; that he prepared the foregoing petition for review; that he is familiar with the statements contained therein; that the state-

ments are true to the best of his knowledge and belief; and that said petition is not filed for the purposes of delay.

This 18th day of February, 1957.

WILLIE M. TOYE,
(Seal) Notary Public, Fulton County, Georgia.

My Commission Expires Nov. 19, 1960.

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Filed Feb. 26, 1957.

In the United States Court of Appeals for the Fifth Circuit.

Lewis Thurston Anderson, Petitioner,
v. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

To: Acting Chief Counsel
Internal Revenue Service
Washington, D. C.

Honorable Charles K. Rice
Assistant Attorney General
Washington, D. C.

Pursuant to Rule 37(3) of the Rules of the United States Court of Appeals for the Fifth Circuit, you are hereby notified that a petition for review of the decision of the Tax Court of the United States entered on December 13, 1956 on the above styled case has been filed and a copy of the petition is attached hereto.

This the 22 day of February, 1957.

L. EUGENE McNATT,
(L. Eugene McNatt),
Attorney for Petitioner.

45 Eighth Street, N.E.,
Atlanta 9, Georgia.

Certificate of Service.

I do hereby certify that the foregoing Notice of Appeal, wih a copy of the petition for review attached thereto, has been served on the opposite parties mentioned above by mailing a copy to each of them, correctly addressed and with sufficient postage affixed thereto.

This the 22 day of February, 1957.

L. EUGENE McNATT,
(L. Eugene McNatt).

MOTION FOR CONSOLIDATION OF ABOVE PETITIONS FOR REVIEW.

Filed Mar. 11, 1957.

(Original Filed—March 8, 1957.)

United States Court of Appeals for the Fifth Circuit.

Lewis Thurston Anderson and Clyde Velma Anderson, Appellants,
v. T. C. Docket No. 35385.
Commissioner of Internal Revenue, Respondent.

Lewis Thurston Anderson, Appellant,
v. T. C. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Come now the appellants, by their undersigned attorney, and move the Court to enter an order that the petition for review of the orders and decisions of the Tax Court of the United States in causes numbered 35385 and 35386 be consolidated into one cause and as grounds therefor shows that said causes were consolidated for hearing before the Tax Court pursuant to an oral motion.

Appellants further show that said causes involve common considerations of law and fact and that consolidation will avoid unnecessary expense and delay.

Wherefore it is prayed that this Motion be granted.

(Signed) L. EUGENE McNATT,
(L. Eugene McNatt),
Attorney for Appellants.

45 Eighth Street, N. E.,
Atlanta 9, Georgia

Service of the foregoing motion is hereby acknowledged and copies received. Respondent has no objection to the granting of the motion.

(Signed) HERMAN T. REILING,
Acting Chief Counsel, Internal Revenue Service, Attorney for Respondent.

ORDER.

Upon consideration of the foregoing Motion and it appearing that the Appellee has no objections to the granting of the Motion, it is hereby ordered:

1. That cause numbered 35385 and 35386 on the docket of the Tax Court of the United States be consolidated into one cause.

2. That three certified copies of this order be transmitted to the Clerk of the Tax Court of the United States, Washington 25, D. C., and that one copy be incorporated in the transcript of record filed in this consolidated cause.

(S.) WAYNE G. BOOTH,
U. S. Circuit Judge.

A True Copy.

Test:

EDWARD W. WADSWORTH,
Clerk, U. S. Court of Appeals
For the Fifth Circuit.
By GILBERT F. GANUCHEAU,
(Seal) Deputy

Mar. 8, 1957.

MOTION FOR TRANSMISSION OF ORIGINAL EXHIBITS AND FOR DISPENSING OF PRINTING AND FOR OTHER PURPOSES.

Filed Mar. 11, 1957.

(Original Filed—March 8, 1957.)

United States Court of Appeals for the Fifth Circuit.

Lewis Thurston Anderson and Clyde Velma Anderson, Appellants,
v. T. C. Docket No. 35385.
Commissioner of Internal Revenue, Respondent.

Lewis Thurston Anderson, Appellant,
v. T. C. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

Come now the appellants, by their undersigned attorney and move the Court to enter an order:

1. That the original exhibits received in evidence need not be reproduced for the purpose of a transcript of the record or included in the printed record, but in lieu thereof, the Clerk of the Tax Court be directed to transmit all original exhibits to the Clerk of the United States Court of Appeals for the Fifth Circuit, with provision that the Clerk of the Tax Court be directed to hold such exhibits until ten days before these consolidated causes are set for hearing before this Court and upon direction of counsel to transmit said original exhibits to the Clerk of this Court to be produced by him at the hearing of these consolidated causes for the benefit of the Court and Counsel.

2. The the original official report of these consolidated proceedings made before the Tax Court of the United States, including the oral testimony, in lieu of a narrative statement of the evidence, be made a part of the transcript of record in these consolidated causes to be filed with this Court. Said original official report to be returned to the Tax Court when it has served the purpose of the Appellate Court.

3. That the aforementioned exhibits need not be included in the printed record, except where either party may desire to print in whole or in part any of such exhibits as an appendix to his brief but that said exhibits may be referred to by either counsel in briefs or on oral arguments and considered by this Court with the same force and effect as if included in the printed record.

As grounds for the within motion, appellants show:

(a) That aforementioned exhibits, consist of accounting schedules, deeds, ledgers, tax returns and similar documents, are of such nature that their inclusion in the printed record is unnecessary and would not be practical.

(b) That these consolidated causes involve issues as to whether the Tax Court's findings were clearly erroneous and such issues can be better resolved by reference to the testimony in the form in which it was given before the Tax Court than by reference to a narrative statement of the evidence.

Wherefore, it is prayed that the motion be granted.

(Signed) L. EUGENE McNATT,
(L. Eugene McNatt)

45 Eighth Street, N.E.,
Atlanta 9, Georgia

Service of the foregoing motion is hereby acknowledged and copies received. Respondent has no objections to the granting of this motion and hereby agrees to the same.

(Signed) HERMAN T. REILING,
Acting Chief Counsel, Internal Revenue Service.

ORDER FOR TRANSMISSION OF ORIGINAL EXHIBITS AND FOR DISPENDING OF PRINTING AND FOR OTHER PURPOSES.

Upon consideration of the foregoing motion and it appearing that the appellee has no objections to the granting of the motion, it is hereby ordered:

1. That all original exhibits received in evidence by the Tax Court of the United States in these consolidated causes need not be reproduced for the purpose of a transcript of the record or included in the printed record, but in lieu thereof, the Clerk of the Tax Court is directed to transmit such original exhibits to the Clerk of the United States Court of Appeals for the Fifth Circuit, provided that the Clerk of the Tax Court is directed to hold such exhibits until ten days before these consolidated causes are set for hearing before this Court and upon direction of counsel to transmit all original exhibits to the Clerk of the Court to be produced by him at the hearing of these consolidated causes for the benefit of the Court and Counsel.

2. That the original official report of these consolidated proceedings made before the Tax Court of the United States, including the oral testimony in lieu

of a narrative statement of evidence, be made a part of the transcript of record to be filed with this Court in these consolidated causes. Said original official report to be returned to the Tax Court when it has served the purpose of the Appellate Court.

3. That the aforementioned exhibits need not be printed in the printed record except where either party may desire to print in whole or in part any such exhibit as an appendix to briefs, but that such exhibits may be referred to by either counsel in briefs and on oral arguments and considered by the Court with the same force and effect as if included in the printed record.

4. That three certified copies of the order entered herein be transmitted to the Clerk of the Tax Court of the United States, Washington 25, D. C. and that one copy be incorporated by him in the transcript of the record.

(S.) WAYNE G. BORAH,
U. S. Circuit Judge.

A True Copy.
Test:

EDWARD W. WADSWORTH,
Clerk, U. S. Court of Appeals
For the Fifth Circuit.
By GILBERT F. GANUCHEAU,
(Seal) Deputy.

Mar. 8, 1957.

DESIGNATION OF CONTENTS OF RECORD ON REVIEW.

Filed Mar. 13, 1957.

The Tax Court of the United States.

Lewis Thurston Anderson and Clyde Velma Anderson, Petitioners,
v. T. C. Docket No. 35385.
Commissioner of Internal Revenue, Respondent.

Lewis Thurston Anderson, Petitioner,
v. T. C. Docket No. 35386.
Commissioner of Internal Revenue, Respondent.

To the Clerk of the Tax Court of the United States:

Please prepare a transcript of the record on these consolidated proceedings and on or before April 26, 1957 and transmit the same to the Clerk of the Court of Appeals for the Fifth Circuit and include in said transcript the original official report of this consolidated proceeding made before the Tax Court of the United States at Columbia, S. C. in October, 1955, including the oral testimony, in accordance with an order from the Court of Appeals for the Fifth Circuit and include in said transcript copies, duly certified as correct of the following documents:

(1) The docket entries of all proceedings before the Tax Court.

(2) Pleadings before the Tax Court as follows

(a) Petition, answer and reply in docket Nos. 35385 and 35386

(b) Amended petition, answer to amended petition and reply to answer to amended petition in dockets Nos. 35385 and 35386.

(3) Stipulation of facts, but excluding all exhibits thereto, which exhibits, along with all other exhibits received in evidence, are to be transmitted to the Clerk of the Court for the Fifth Circuit 10 days before this cause is set for hearing before said Court, in accordance with order from said Court.

(4) The findings of fact and opinion of the Tax Court.

(5) The decisions of the Tax Court in dockets Nos. 35385 and 35386.

(6) The petitions for review in dockets Nos. 35385 and 35386.

(7) The stipulation with respect to venue.

(8) Notices of filing of petition for review in dockets Nos. 35385 and 35386.

(9) Order consolidating dockets Nos. 35385 and 35386 on review.

(10) Order for transmission of original exhibits and for dispensing of printing and for other purposes.

(11) This designation of record.

Said transcript to be prepared as required by law and Rules of the United States Court of Appeals for the Fifth Circuit.

Respectfully,
(Signed) L. EUGENE McNATT,
(L. Eugene McNatt),
Attorney for Petitioners.

45 Eighth Street, N.E.,
Atlanta 9, Georgia.

Certificate of Service.

I do hereby certify that a copy of the foregoing designation of record on review has been served on the Chief Counsel, Internal Revenue Service and the Assistant Attorney General, Tax Division, by mailing a copy to each of them, correctly addressed and with sufficient postage affixed.

This 11th day of March, 1957.
(Signed) L. EUGENE McNATT,
(L. Eugene McNatt).

45 Eighth Street, N. E.,
Atlanta 9, Georgia.

CERTIFICATE.

The Tax Court of the United States.
Washington.

Lewis Thurston Anderson and Clyde Velma Anderson,
Lewis Thurston Anderson, Petitioners,
v. Docket Nos. 35385, 35386.
Commissioner of Internal Revenue, Respondent.

I, HOWARD P. LOCKE, Clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 1059, inclusive, contain and are a true copy of the papers on file and of record in my office with the original testimony as called for by the Praecipe in the appeals as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 26th day of March, 1957.

HOWARD P. LOCKE,
(Seal) Clerk, The Tax Court of the United States.

SUPREME COURT, U.S.
FILED
MAR 27 1958
JOHN T. FEY, Clerk

No. [illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

LEWIS THURSTON ANDERSON and
CLYDE VELMA ANDERSON,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

OF COUNSEL:
L. EUGENE MCNATT
45 Eighth Street, N.E.
Atlanta, Georgia

PAUL WEBB, JR.
1329 First National Bank Bldg.
Atlanta 3, Georgia
Attorney for Petitioners

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

LEWIS THURSTON ANDERSON and
CLYDE VELMA ANDERSON,

Petitioners,

V.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Lewis Thurston Anderson and Clyde Velma Anderson, petitioners above named, respectfully petition your

Honorable Court that a writ of certiorari issue to review the decision and order of the United States Circuit Court of Appeals for the Fifth Circuit entered December 6, 1957, motion for rehearing denied December 30, 1957, affirming a decision of the Tax Court of the United States entered December 13, 1956, in favor of the Respondent and against the petitioners, and respectfully show:

OPINIONS BELOW

The opinion of the Tax Court of the United States is printed at pages 901 to 960 of the record in the Circuit Court of Appeals for the Fifth Circuit, and is reported at 15 T.C.M. 922, CCH Dec. 21, 874 (M); T. C. Memo. 1956, 178. The opinion of the Circuit Court of Appeals and the dissenting opinion of Chief Judge Hutcheson (See Appendix, infra) is reported at 250 Fed. 2d 242.

JURISDICTION

The decision of the Circuit Court of Appeals was entered December 6, 1957. A petition for rehearing was filed December 17, 1957. Rehearing was denied December 30, 1957, and an order was entered on the same date. The jurisdiction of this Court is invoked under Section 1254 (1) of Title 28 U.S.C. (Act of June 25, 1948, C. 646).

QUESTIONS PRESENTED

1. May the Tax Court disregard unimpeached, competent, relevant and uncontradicted testimony that there was no market for certain real estate mortgage notes; that the value of said notes does not exceed 30% of their face value; and that the value of the real estate securing

said notes does not exceed 56% of their face value, and without any evidence of a higher value, conclude as an ultimate fact that said notes have a fair market value of 70% of their face value?

2. Did the Tax Court err in denying capital gains treatment on the sale of certain rental property under Section 117 (j) of the Internal Revenue Code of 1939, when the facts as found by the Tax Court (upon uncontradicted testimony) were: that although petitioner had constructed in the years 1946, 1947 and 1948 certain other houses for sale, the houses for which capital gains treatment was claimed were not constructed primarily for sale but were constructed for rental purposes; that they had been held by the petitioner for more than six months at the date of sale; that each of the parcels that had a house on it was rented before it was sold; that petitioner did not employ an agent or otherwise affirmatively engage in a selling campaign; that in nearly every case of sale the purchaser or a relative of the purchaser approached petitioner with an offer to purchase the property; the petitioner sometimes paid a commission on such sales to persons who were not real estate agents (relatives or associates of the purchaser) ; that petitioner sold to any one who approached and wanted to buy; and sometimes sold without receiving a down payment, and when petitioner's testimony that he held said property for rental purposes at the time of sale was not contradicted?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations here involved are:

I.

26 USC Section 117(j)

"(j) Gains and losses from involuntary conversion and from the sale or exchange of certain property used in the trade or business—

"(1) Definition of property used in the trade or business.—For the purposes of this sub-section, the term 'property used in the trade or business' means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Section 23 (l), held for more than six months, and real property used in the trade or business, held for more than six months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. • • •"

"(2) General rule.—If, during the taxable year, the recognized gains upon sales or exchanges of property used in the trade or business • • • exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than six months. • • •"

II.

26 USC Section 111(b)

"(b) AMOUNT REALIZED.—The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received."

III.

Sections 29.117-1 and 29.117-7 of Treasury Regulations 111

"Sec. 29.117-1. Meaning of terms.—The term 'capital assets' includes all classes of property not specifically excluded by Sec. 117 (a) (1). In determining whether property is a 'capital asset', the period for which held is immaterial.

"The exclusion from the term 'capital assets' of property used in the trade or business of the taxpayer of a character which is subject to the allowance for depreciation provided in Section 23 (l) and of real property used in the trade or business of a taxpayer is limited to such property used by the taxpayer in the trade or business at the time of the sale, exchange, or involuntary conversion. Gains and losses from the sale or exchange of such property are not subject to the percentage provisions of Section 117 (b) and losses from such transactions are not subject to the limitations on losses provided in Section 117 (d), except that under Section 117 (j) the gains and losses from the sale or exchange of such property held for more than six months may be treated as gains and losses from the sale or exchange of

capital assets, and may thus be subject to such limitations. See Section 29.117-7. Property held for the production of income, but not used in the trade or business of the taxpayer, is not excluded from the term 'capital assets' even though depreciation may have been allowed with respect to such property under Section 23 (l) prior to its amendment by the Revenue Act of 1942. However, gain or loss upon the sale or exchange of land held by a taxpayer primarily for sale to customers in the ordinary course of his business, as in the case of a dealer in real estate, is not subject to the limitations of Section 117 (b) (c) and (d). * * *"

"Section 29.117-7. Gains and losses from involuntary conversions and for the sale or exchange of certain property used in the trade or business.—

"Section 117 (j) provides that the recognized gains and losses:

(a) From the sale, exchange, or involuntary conversion of property used in the trade or business of the taxpayer at the time of the sale, exchange, or involuntary conversion, held for more than six months, which is

(1) of a character subject to the allowance for depreciation provided in Section 23 (l), or *

(2) real property,

provided that such property is not of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or is not held by the taxpayer primarily for sale to customers in the ordinary course of trade or business, * * *".

STATEMENT OF THE CASE

This case arose upon the filing in the Tax Court of the United States of petitions for the redetermination of income tax deficiencies for the years 1941 through 1948, inclusive.

The Commissioner had determined taxes and penalties of $130,453.54 for the years involved through the use of a net worth reconstruction computation. The Tax Court redetermined the taxes and penalties for said years to be $47,199.67.

Within the time provided by law the petitioner filed his petition for a review of said Tax Court redetermination in the United States Court of Appeals for the Fifth Circuit. Petitioner is a citizen of the United States and resides in Augusta, Georgia. His income tax returns for the years 1942 through 1946 were filed with the Collector of Internal Revenue for the District of Georgia. No return was filed for the year 1947. Jurisdiction of the Fifth Circuit for 1947 was invoked by an agreement in writing signed by the attorneys for petitioner and the Commissioner pursuant to Section 7482 (b) (2) of the Internal Revenue Code of 1954 (26 USCA Sec. 7482 (b) (2)).

FACTS

From 1917 until 1946 petitioner was regularly employed full time as a skilled watchmaker and jeweler. In 1946 petitioner went on a part time basis as a watchmaker, and after 1946, because of his doctor's orders, petitioner did not engage further in that business (R. 409, 410).

In 1917 the petitioner began to buy real estate in and around Augusta, Georgia. His earliest acquisitions were for the purpose of producing rental income. The houses he acquired were run down and burned houses. Some of the rental properties that he owned in some of the taxable years were on Emmett Street, Chaffee Avenue, Heckle Street, Cooper Street, Calhoun Street, Tuttle Street, and East Boundary Street in and around Augusta, Georgia. He also owned at least eleven rental houses in what was known as Druid Hills and seven houses in Brookside, both in Aiken County, South Carolina. (Findings of the Tax Court, R. 905). All of the property was of that class which attracted only renters from the low income groups of society.

Prior to 1946 he also acquired a tract of land of at least fifty acres on the Sand Bar Ferry Road outside of the City of Augusta. He subdivided the Sand Bar Ferry tract into 60 lots and constructed houses on it, some of which were built for rental and some for sale (Findings of the Tax Court, R. 905).

In the years 1946, 1947 and 1948, the petitioner sold twenty houses in the Sand Bar Ferry Road tract that he had constructed for sale. These houses, and three more that he had on hand at December 31, 1948, were the only houses that the petitioner constructed primarily for sale. They were built in the Riverside Park Subdivision of the Sand Bar Ferry Road tract. They were built by the petitioner in order to enable him to dispose of the land which was the back part of the tract (Findings of the Tax Court, R. 907).

In addition to the above properties, the petitioner

built 54 houses in the Sand Bar Ferry tract for the purpose of renting (Finding of the Tax Court, R. 906).

In the years 1942 to 1948, inclusive, the petitioner sold 59 parcels of rental real estate and unimproved land. Each of these parcels had been held by the petitioner for more than six months at the date it was sold. Some of the parcels were improved and some were unimproved. Each of the parcels that had a house on it had been rented before it was sold. (Petitioner testified that each had been rented from purchase to date of sale, (R. 447, 448). In nearly every case of the sale of these properties, the purchaser or a relative of the purchaser approached the petitioner with an offer to purchase the property. The petitioner sometimes paid the commission on such sales to persons who were not real estate agents. He sold to any one who wanted to buy. He sometimes sold without receiving a down payment. (Findings of the Tax Court, R. 907, 908). The petitioner did not employ an agent or otherwise affirmatively engage in a selling campaign (Opinion of the Tax Court, R. 946).

The aggregate numbers of parcels, selling prices, costs, amounts of depreciation and gains were as follows (Finding of the Tax Court, R. 908):

Year	No. Parcels	Selling Price	Cost	Depreciation	Gain
1942	5	$10,300.00	$ 7,599.17	$ 977.00	$ 3,677.83
1943	2	5,600.00	4,300.97	30.00	1,329.03
1944	1	1,850.00	1,625.00	235.12	460.12
1945	21	48,950.00	29,512.80	7,746.25	27,183.45
1946	12	29,696.80	21,244.70	2,351.25	11,803.35
1947	13	51,650.00	23,661.59	5,931.25	31,919.66
1948	5	18,316.66	6,257.78	660.00	12,718.88
	59				

These parcels of property had each been held for more than six months at the date of sale, as tabulated in the following table (Petitioner's Exhibit 18):

Held for more than 15 years	6
Held for more than 10 years	15
Held for more than 8 years	12
Held for more than 5 years	17
Held for more than 3 years	15
Held for less than 3 years	3

The Commissioner had allowed depreciation on all of these properties prior to their sale (Exhibits A, 40-LL, 43-00).

Petitioner also retained eleven pieces of rental property at the end of the period (1948) which has been acquired in the following years:

1921	2
1923	1
1927	1
1929	1
1938	1
1939	1
1941	1
1944	3
Total	11

No real estate firm in Augusta has ever sold any of petitioner's houses in the Sand Bar Ferry Road area. The houses could not qualify for FHA loans. Savings and loan associations would not make improvement loans on the properties, and returned the fees that were paid with applications for loans. Occupants of the properties were in low income brackets. The houses were sold at prices in excess of their fair market values. The purchasers were willing to agree to the selling prices because the downpayments were low and in some cases no downpayment was required. The purchasers were interested primarily in the amount of the monthly payments (Findings of the Tax Court, R. 913).

On these sales of real estate the petitioner received from the purchasers security deeds to secure notes for the unpaid portion of the purchase price. The notes bore interest at varying rates from 5% to 8%. Some of these security deeds were on property in the Sand Bar Ferry tract. That tract was outside of the city limits and the houses built thereon were not subject to the City Building Code. They were sub-standard in construction and materials. They did not have footings, and such pillars as they had consisted of concrete blocks, some without mortar, and were not at the bearing points. The floor joists and rafters were two feet apart. The window and door frames were not mill-made, but were made out of whatever lumber was handy. The window sashes were of an obsolete type, with the upper panes stationary; they had no weights or balances. The houses had no baths or other sanitary facilities. The streets in the area were not paved, and there were no street lights (Findings of the Tax Court, R. 911, 912).

The other rental houses owned by petitioner in and about Augusta, Georgia, some of which he sold in the taxable years, and on which he took back security deeds, for the most part were also of sub-standard construction. Some of them had been built fifty or sixty years ago to rent at $15.00 to $20.00 per month. Some of the properties were badly run down. Some were rented at monthly rentals of from $4.00 to $7.00. The petitioner's properties, generally, were properties that were hard to finance (Findings of the Tax Court, R. 913).

Mr. Gerald Mulherin testified on behalf of the petitioner that he had lived in Augusta, Georgia all of his life, and had been engaged for nearly forty years in the real estate business and the building construction business. Mr. Mulherin testified that he was familiar with petitioner's properties (R. 215, 246).

After a ruling by the Court that he was qualified to do so, Mr. Mulherin testified that it was his considered judgment, based on his experience, that there was no market in Augusta for petitioner's mortgages, and that no lender in Augusta would have made a loan on his properties (R. 245, 246).

Mr. W. T. Burchhalter testified on behalf of the petitioner that he was a licensed real estate broker who had been continuously connected with the real estate business for eighteen years, and that for the last four years he had operated his own real estate business. As a part of that business his duties were listing property for sale, appraisal of property for the purpose of selling and handling GI and FHA loans. Mr. Burchhalter was a compliance inspector for the Veteran's Administration

He was familiar with petitioner's property and had had considerable experience in placing money or lending in the Augusta area through the FHA and GI mortgage programs and through the Metropolitan Life Insurance Company, Prudential Life Insurance Company, and with local lending institutions in Augusta such as the First Federal Savings & Loan Association. Mr. Burchhalter testified that in his opinion, based on his experience and observation, the mortgage paper of petitioner would not have a ready market for resale because the paper was not attractive. The witness did not know of any approved mortgagee or individual who is lending money who would be interested in any paper on petitioner's type of property (R. 257). Mr. Burchhalter further testified specifically as to the value of each particular parcel of real estate sold by petitioner during the period involved, and it was upon his testimony that the Tax Court found as a matter of fact that the security behind the mortgage paper had a value of only 56% of the face value of the paper.

Mr. J. L. Liner testified on behalf of the petitioner that he had been in the business of building and remodeling houses for fifteen years including the building and remodeling, repairing, financing and refinancing of homes. That he had been so engaged in and around Augusta, Chattanooga, Tennessee, and Birmingham, Alabama. His experience with reference to the placing of mortgage money and refinancing homes had been primarily in that range of homes having a valuation of less than $6,000.00 (R. 345). In this connection the witness had had extensive experience in appraising property for the purpose of placing loans on the property.

He had placed loans with various lending institutions in Augusta such as the First Federal Savings & Loan Association, the Realty Savings Bank, the Georgia Railroad Bank, the C. & S. Bank, Standard Loan & Investment, and numerous individuals in Augusta (R. 348). The witness had placed at least one thousand mortgage loans in his experience, nearly all of it on property that was valued at $6,000.00 or less (R. 349). The witness was familiar with petitioner's property and its valuation. He had had experience in selling mortgage paper such as that of the petitioner (R. 350, 351). In each of the mortgage transactions that the witness had handled he had appraised the property from his own standpoint and from the standpoint of the organization or the individual considering making the loan, and had compared his appraisals with those of the bank appraisers (R. 352). The witness testified that in his opinion the market value of petitioner's mortgage notes was not greater than 30% of the face value of the notes and mortgages, and that in some of the cases it would be less than that (R. 357).

The Commissioner did not introduce any testimony as to the value of the property itself or of the mortgage paper secured by the property.

Upon its consideration of the case with reference to the questions herein raised, the Tax Court concluded as a matter of fact that the taxpayer had held all of the houses sold, both the rental houses and those constructed for sale, primarily for sale in the regular course of business; and that the mortgage paper taken by petitioner in connection with these sales had a valuation of 70% of its face value.

Within the proper time petitioner filed his petition for review in the United States Circuit Court of Appeals for the Fifth Circuit. Upon consideration of the case by the Circuit Court the determination of the Tax Court was affirmed, with Chief Judge Hutcheson vigorously dissenting.

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE CIRCUIT COURT OF APPEALS BELOW IS IN CONFLICT WITH DECISIONS OF OTHER CIRCUIT COURTS ON BOTH THE ISSUE OF VALUATION OF THE MORTGAGE PAPER, AND THE ISSUE OF CAPITAL GAINS TREATMENT UNDER SECTION 117 (j) OF THE INTERNAL REVENUE CODE OF 1939.

A.

VALUATION OF THE MORTGAGE PAPER

The decision of the Court below affirming the valuation of petitioner's mortgage paper is in direct conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Nichols v. Commissioner of Internal Revenue*, 44 Fed. 2d 157, and with the decision of the Circuit Court of Appeals for the Sixth Circuit in *Miller v. United States*, 235 Fed. 2d 353, each of which involved the same question as the instant case, to-wit: May the Tax Court or the District Court disregard all of the positive evidence in the case with reference to value, and make a determination contrary to such evidence?

In each of the cited cases the factual situations were strikingly similar to that of the instant case, and both

the Third Circuit and the Sixth Circuit reached decisions diametrically opposed to that of the Fifth Circuit in the instant case.

Here the petitioner offered positive testimony which was adopted by the Tax Court in its findings of fact, that the houses securing the mortgage paper were substandard in construction; that the houses could not qualify for FHA or savings and loan association loans; that applications for such loans were denied and the application fees returned to the borrowers; that the houses were sold to persons in low income brackets for prices in excess of their fair market value because the down payments were either low or non-existent, and the purchasers were primarily interested in the amount of the monthly payments; that the houses generally were hard to finance and that the value of the security was 56% of the face amount of the mortgage paper *(Findings of the Tax Court, pages 912, 913, 940).

The petitioner offered further evidence by disinterested witnesses who were in the real estate and mortgage business, that there was no market in Augusta for petitioner's paper, and that no lender in Augusta would make a loan on the paper; (R. 245, 246); that the paper would not have a ready market for resale because no approved mortgagee or individual who was lending money would be interested in any paper on that type of property (R. 257); that certain individuals might buy the paper if the discount were low enough, but that none of the paper was worth over 30% of its face value and some of it was worth less (R. 357). None of this testimony was impeached or contradicted in any way. The taxpayer testified that he attempted to pledge $108,

000.00 worth of the face value of this paper as security for a loan of $15,000.00, but that the bank would not accept the security (R. 495). This testimony was not contradicted and the Commissioner offered no evidence whatsoever relative to the value of the paper.

While rejecting the Commissioner's contention that the value of the paper was 100% of its face value, the Tax Court concluded that the value was 70% of its face value (R. 940, 941). Not only was there no specific testimony to this value of 70%, but it did not lie within any range of figures that might properly be deduced from the evidence. See *Archer v. Commissioner of Internal Revenue*, (C.A. 5) 227 Fed. 2d 270, 273. The highest valuation of the paper established by specific testimony was 30%; the highest valuation of the property securing the paper was 56% of the face value of the paper, as found by the Tax Court. It is respectfully submitted that the range within which the Tax Court was limited by the evidence was 0% to 56% of the face value of the paper, and that any valuation outside of this range was without any substantial evidence to support it.

In affirming the Tax Court, the Fifth Circuit pointed to the following facts in the record to support the Tax Court's finding of the value of 70% of the face value:

> "(1) The testimony of petitioner's witnesses establishing a value of the security at 56%; (2) the shortage of houses and the great demand existing at the time in question; (3) houses were located near mills and army camps; (4) the notes were being currently paid off and the payments included substantial interest payments." (Appendix p. 37.)

It will readily be seen that items Nos. 2 and 3 of the evidence pointed out by the Circuit Court were relevant.

only to the value of the underlying security, and had no direct bearing on the value of the paper itself. Item 1 established the value of the underlying security at 56% and the Tax Court so found in its findings of fact. There was no evidence that the paper had a greater value than that of the underlying security but, to the contrary, it was uncontradicted that it did not; that the purchasers were from a low income group (R. 913); that the kind of security deeds involved were "short form" deeds which were used because no deficiency judgments could be collected from the purchasers (R. 622). None of Items 1, 2 or 3 relied on by the Circuit Court could support a valuation for the paper higher than 56% of its face value.

Item 4, relied on by the Tax Court, was that the notes were currently being paid. This criterion was specifically considered by the Sixth Circuit in *Miller v. United States*, *Supra*, and rejected, the Court saying at page 556 of 235 Fed. 2d:

> "If negotiable securities such as mortgage notes are shown by uncontroverted evidence to have had no fair market value at the time they were received in trade, they should not be assumed retrospectively to have had an actual market value contrary to the realities of the case merely because the notes were subsequently—in large part—collected when due."

In considering the impracticality of the retrospective viewpoint the Court considered the expression of Mr. Justice Holmes in *City of New York v. Sage*, 239 U. S. 57, 61, 36 S. Ct. 25, 60 L. Ed. 143, and in *Ithaca Trust Co. v. United States*, 279 U. S. 151, 155, 49 S. Ct. 291, 73 L. Ed. 647, and likewise sayings of the Supreme Court

in *United States v. American Bell Telephone Co.*, 167 U. S. 224, 261, 17 S. Ct. 809, 42 L. Ed. 144.

In holding that the action of the Commissioner in placing a percentage valuation on the mortgage paper involved in that case was arbitrary, clearly erroneous, and contrary to practical considerations the Sixth Circuit said at page 558 of 235 Fed. 2d:

> "In the instant case, it was proved by positive evidence that there was no fair market value for the second-mortgage notes in controversy at the time the notes were received by the taxpayer. * * * There was no evidence in the instant case to rebut the positive proof that the second-mortgage notes in controversy, when received by the taxpayer, had no market value."

This language of the Sixth Circuit may be fairly paraphrased with reference to the instant case as follows:

> "In the instant case it was proved by positive evidence that the fair market value for the mortgage notes in controversy at the time the notes were received by the taxpayer was not greater than 30% of their face value and there was no evidence to rebut this positive proof. Therefore, the action of the Tax Court in placing a 70% valuation on the notes was arbitrary, clearly erroneous, and contrary to practical considerations."

Likewise in *Nichols v. Commissioner of Internal Revenue*, (C. A. 3) 44 Fed. 2d 157, disinterested witnesses who lived in the community, knew the history of the notes involved, and the property securing them, all gave opinion testimony that the bonds in question had no market value in 1920, and were not acceptable as collateral security. The Commissioner did not offer any

testimony contradicting or attempting to impeach this opinion testimony.

Accordingly, the Third Circuit Court of Appeals held that the Board of Tax Appeals erred when it ignored this opinion testimony and found a value which was not supported by any of the evidence.

It is respectfully submitted that the decision of the Fifth Circuit Court of Appeals in the instant case is in direct conflict with the decisions of the Circuit Courts of Appeal for the Third and the Sixth Circuits in the cited cases, and that this Court should accept jurisdiction and resolve said conflict.

B.

DENIAL OF CAPITAL GAINS TREATMENT UNDER SECTION 117 (j) OF THE INTERNAL REVENUE CODE OF 1939.

The decision of the Circuit Court below, denying capital gains treatment under Section 117 (j) of the Internal Revenue Code of 1939, is in direct conflict with the decision of the Circuit Court of Appeals for the Tenth Circuit in *Victory Housing No. 2 v. Commissioner of Internal Revenue,* (C. A. 10) 205 Fed. 2d 371, and with the decision of the Circuit Court of Appeals for the Third Circuit in *Curtis Company v. Commissioner of Internal Revenue* (C. A. 3) 232 Fed. 2d 167.

The controlling question with reference to the capital gains treatment denied by the Commissioner is: Were the houses for which capital gains treatment is claimed, held by the taxpayer "*primarily* . . . for sale to customers

in the ordinary course of his trade or business?" *26 USC Sec. 117(a)(1)(j)(1).*

The taxpayer admitted that certain other houses were constructed and held primarily for sale (R. 454); but, with reference to the 58 houses here involved, the taxpayer testified without contradiction, that *they were acquired for the purpose of renting and not for sale;* that each of the 58 houses involved was rented from the time it was acquired until the stipulated date of sale; that he did not solicit the purchasers but in nearly every instance some relative of the purchaser who lived in the neighborhood would come to him on behalf of the purchaser, and that he would sell if they had any money for a down payment, or sometimes without any down payment (R. 447, 448; See petitioner's Exhibits 18 and 19, copies of which are reproduced in the Appendix to this petition; see Judge Hutcheson's dissent, Appendix p. 42). The taxpayer also retained eleven pieces of rental property at the end of the period (1948) which had been acquired over the years beginning in 1921.

The Tax Court accepted most of this testimony, and found that each of the parcels involved had been held for more than six months; that it had been acquired for rental purposes and not for sale; that it had been rented until sold; that in nearly every instance the purchaser or a relative of the purchaser had approached the taxpayer with an offer to purchase and that the taxpayer did not engage an agent or otherwise affirmatively engage in a selling campaign (Finding of the Tax Court, R. 907, 908, 946).

However, pointing to the fact that petitioner held

other property for sale, and the continuity, numbers and frequency of the sales (R. 946), the Tax Court disregarded the uncontradicted testimony of the taxpayer, (which was supported by its own findings) and concluded that *all* of the houses sold by the taxpayer were held *primarily* for sale in the ordinary course of business (R. 946). The decision of the Circuit Court below affirming this conclusion of the Tax Court runs directly counter to the decisions of the Circuit Court of Appeals for the Tenth Circuit in *Victory Housing No. 2 v. Commissioner of Internal Revenue, Supra,* and in *A & A Tool and Supply Co. v. Commissioner of Internal Revenue,* 182 Fed. 2d 300, and the decision of the Circuit Court of Appeals for the Third Circuit in *Curtis Co. v. Commissioner of Internal Revenue, Supra.*

In *A & A Tool and Supply Company v. Commissioner of Internal Revenue, Supra,* involving a question of fair rental value, after pointing out that the taxpayer's testimony on the question was far from satisfactory, the Circuit Court of Appeals for the Tenth Circuit reversed the Tax Court for disregarding this testimony, saying at page 304 of 180 Fed. 2d:

> "The presumption that the Commissioner's determination is correct is one of law; it is not evidence and may not be given weight as such. NY Life Ins. Co. v. Gamer, 303 U. S. 161, 171, 58 S. Ct. 500, 82 L. Ed. 726, 114 ALR 1218. When evidence is introduced by the taxpayer sufficient for the Tax Court to base a finding contrary to the determination the presumption disappears. Crude Oil Corp. of America v. Commissioner, 10 Cir., 161 Fed. 2d 809; Mayson Mfg. Co. v. Commissioner, 6 Cir., 178 Fed. 2d 115, 121. * * * It (the Tax Court) may not arbitrarily discredit and disregard unimpeached,

competent and relevant testimony of a taxpayer which is uncontradicted."

In *Curtis Co. v. Commissioner of Internal Revenue, Supra,* the facts were that prior to 1942 the taxpayer was engaged in building houses for sale. In addition to these houses, he also built and held houses for rental purposes. In 1946 the taxpayer determined to sell the rental houses and affirmatively engaged in a selling campaign. The Third Circuit reversed the Tax Court's conclusion that the houses, originally acquired for rental, were held primarily for sale in the ordinary course of business merely because of the continuity, numbers and frequency of the sales and because the taxpayer actively engaged in a selling campaign.

Likewise in *Victory Housing No. 2 v. Commissioner of Internal Revenue, Supra,* the taxpayer had constructed houses for rental and had rented them for several years. Later it decided that it would sell some of the rental houses. In reversing the Tax Court's conclusion that the houses were held primarily for sale, the Tenth Circuit said at page 373 of 205 Fed. 2d:

"The corporation, therefore, determined that it would sell these houses to veterans who came in, inquired about them, and desired to buy and thus as veterans and later some non-veterans came to inquire about these rental facilities and expressed a desire to buy, they were sold, but the company carried on no sales campaign. It did not advertise the houses for sale either through publication or by signs erected on the premises. It did not list them with real estate men. It did none of the things which we ordinarily associate and find with one actively engaged in the real estate business. The fact that 42 units were sold over a period of six months does

> not establish a real estate business or the sale of property in the ordinary course of such a business. * * * We think there is a complete absence of any facts supporting the conclusion that petitioner abandoned its rental business and engaged in the real estate business or engaged in the additional activities of a real estate business for the purpose of selling *these capital assets* in the ordinary course of such new business to its customers. In the absence of such a showing, the sales were sales of capital assets and the tax on the gain should have been computed as contended for by petitioner."

Not only was the decision of the Circuit Court below in conflict with decisions of other Circuit Courts, but, as vigorously pointed out by Chief Judge Hutcheson in his dissent, it ran counter to its own reasoning and decisions in the cases of *J. H. Robinson Truck Lines v. Commissioner*, 5 Cir., 183 Fed. 2d 739, *C. F. Hightower v. Commissioner*, 5 Cir., 187 F. 2d 535, and *Burford-Toothaker Tractor Co. v. Commissioner*, 5 Cir., 192 Fed. 2d 633, and in *Smith v. Dunn*, 5 Cir., 224 Fed. 2d 353; *Foran v. Commissioner*, 5 Cir., 165 Fed. 2d 705; *Ross v. Commissioner*, 5 Cir., 227 Fed. 2d 265; *Consolidated Naval Stores v. Fahs*, 5 Cir., 227 Fed. 2d 923, and *Goldberg v. Commissioner*, 5 Cir., 223 Fed. 2d 709.

C.

THERE WAS NO WARRANT IN THE RECORD TO SUSTAIN THE CONCLUSIONS OF THE TAX COURT.

Petitioner, of course, recognizes the rule that when there is any substantial evidence to support the findings of the Tax Court, these findings must be accepted by the reviewing court. *Helvering v. Kehoe*, 309 U. S. 277, 60

S. Ct. 549, 84 L. Ed. 751. The corollary of this rule is also true, however, and, if there is no substantial evidence, or "warrant in the record" to support the ultimate conclusions, these must be rejected. *A & A Tool and Supply Co. v. Commissioner of Internal Revenue* (C. A. 10) 182 Fed. 2d 301, and cases cited.

In the instant case there was no evidence, substantial or otherwise, to support the conclusions of the Tax Court as to the value of petitioner's mortgage paper, or that petitioner held his rental property primarily for sale in the ordinary course of business. In this connection, Chief Judge Hutcheson said in his dissenting opinion at page 251 of 250 Fed. 2d (Appendix p. 44):

> "I am of the equally firm opinion that the Tax Court gravely erred when, without any testimony to the contrary and in the face of the testimony of all the witnesses as to their value, though conceding that the commissioner had erroneously determined that their fair market value was their face, it reached up into the air to pluck a figure down to which no one testified and which a mere reading of the record will show is not only unsupported by, but is contrary to, all of the testimony.
>
> "It will serve no useful purpose for me to set out this testimony. It is sufficient to say: that the statements in the brief of the petitioner as to the state of the evidence are completely accurate, that neither the brief of the taxpayer, (sic) the opinion of the Tax Court, nor that of the majority of this court in any manner contradicts these statements; and that, when the nature and character of the property are considered, there is not only no reasonable basis but no basis whatever for a finding that the fair market value of the security deeds as a whole was 70 percent of their face, none that they exceeded 50 (sic) percent of their face.

"As to the second question, the claim of the petitioners to capital gains treatment, a matter which the majority opinion does not even treat at all, except by a sweeping dictum, I think it completely clear that, upon this record and the controlling cases from this court, the finding of the Tax Court is mere fiating without any support in the evidence, indeed directly contrary to it.

"In support of their claim that they were entitled to capital gains treatment on the sale of the properties in question, petitioners testified without contradiction that the 58 pieces of property in question were acquired for rental purposes and that they were not held for sale to customers in the regular course of their business.

"The Commissioner introduced no evidence whatever to the contrary. The Tax Court, without pointing to any evidence in support of its conclusion except that the petitioners did have other properties which were held for sale, lumped all of their properties together, though some were and some were not held for sale, and by its mere say so brushed away the testimony of petitioners which was not contradicted and was not shown in any manner to be unreliable."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition should be granted and that writ of certiorari should issue to the Circuit Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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APPENDIX

Opinion and dissenting Opinion of the Circuit Court of Appeals for the Fifth Circuit:

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 16624

LEWIS THURSTON ANDERSON and CLYDE VELMA ANDERSON, LEWIS THURSTON ANDERSON,
Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petitions for Review of Decisions of The Tax Court of the United States (District of Georgia).

(December 6, 1957.)

Before HUTCHESON, Chief Judge, and TUTTLE and WISDOM, Circuit Judges.

TUTTLE, Circuit Judge: This petition for review of a decision of the Tax Court in these consolidated cases involving income tax liability for the years 1942 through 1948, and certain additions to the tax for several of the years, presents primarily a series of fact

issues. These are whether the deficiencies ascertained by the increase in net worth method of computation are supported in fact by the record, whether the assessment of the fraud penalty for some of the years was justified and whether the determination that the failure to file a return for 1947 was due to wilful neglect rather than reasonable cause is clearly erroneous.

Other questions involving mixed issues of law and fact or law alone must also be disposed of.

Briefly stated, the taxpayer was engaged during the years 1942 through 1946 as a watchmaker as he had been for many years previously. He worked for wages varying from $55 to $70 per week. He filed income tax returns for all the years in issue except for 1947. Beginning long prior to the tax years taxpayer had begun acquiring small properties consisting principally of cheap residential property which he kept up largely himself and rented to tenants of low income groups. He continued to acquire land and houses and to build small poorly constructed dwellings both for rent and for sale during certain of the tax years. He also acquired some farm acreage and timber lands. Towards the end of the period (from 1945 to 1948) his holdings in securities increased from $10,369.81 to $26,436.00. He owned security deeds secured by real estate sold by him on small or no down payment and for small monthly payments in the following face amounts for the years in issue:[1] 1942, $4,863.62; 1943, $6,440.51; 1944, $6,587.15; 1945, $43,795.64; 1946, $58,907.48; 1947, $127,562.28; 1948, $165,899.92. Dur-

1 The reasonable value of these notes will be discussed below.

ing the same period his ownership of land at cost was as follows:

1942	$69,929.77
1943	71,578.80
1944	88,486.30
1945	61,348.52
1946	48,150.34
1947	38,737.78
1948	36,523.89

The taxpayer's cash on hand and other assets increased moderately, as did his indebtedness.

It was apparent from the most cursory search that there was a substantial increase in taxpayer's net worth during the period that was not reflected in the annual returns filed by him.

The taxpayer kept no books of account from which his income could be even approximated. He did much of his dealings in cash and destroyed all cancelled checks. The investigation of the seven years commenced with a conference with revenue agents in June 1947, when they were investigating his 1944 return. At this time, on request of the agents for records of income and expenses, he furnished them with three notebooks one of which purports to contain records of sales from 1943 to 1945, another bore the caption "Income Tax Book—1944," and the third has written on the cover "1946 to . . . ." Two of the three books are in evidence and contain entries concerning sales of numerous parcels of real estate. The entries include the names of the purchaser, the street name and house number of the property, the amount of the loan and payments made by the purchaser. In some instances a cost figure is shown; in others it is

not. The book captioned "Income Tax Book—1944" is not in evidence. The agents made a transcript of the books and returned them to the taxpayer on January 30, 1948. The taxpayer informed the revenue agents that he had no records other than the books he gave to them. Actually on the trial he produced three other books which were also inadequate.

The taxpayer was a man of considerable frugality. He was married and had a daughter living with him. He convinced the Tax Court that his personal living expenses (added to the annual increase in net worth) were only $1,000 per year for himself, wife and daughter.

The petitioner's first attack on the finding of the Tax Court is based on his contention that the Commissioner made arbitrary determinations of increases in net worth that were demonstrated by subsequent findings of the Tax Court to be so unreliable as to withdraw from the determinations all presumption of correctness. The chief fallacy of this contention lies in the major premise. The determinations made by the Commissioner were neither arbitrary nor unreasonable under the circumstances of the investigation. The agents made a long and painstaking investigation of taxpayer's income. They were frustrated in their efforts to check the correctness of his returns by a complete absence of any system of accounting and a complete absence of records or supporting documents. As we said in *Bryan v. Commissioner of Internal Revenue*, 5 Cir., 209 F. 2d 822:

> "When a taxpayer violates the mandate of the statute which requires him to keep proper records of his income, 26 U.S.C.A. §54 (a), and

> conditions are otherwise such that his taxable income may be determined in retrospect only by resort to circumstantial evidence of this character, he will not be permitted to rely upon his ability to conceal the detailed facts of his income and his fraudulent conduct to avoid the imposition of taxes which the collecting authorities may show to be lawfully due."

Here resort was had to the Banks in which taxpayer had accounts, to the real estate records, dealers who furnished supplies, purchasers of houses and brokers' offices; the taxpayer, his mother and his sister were repeatedly questioned; copies of his own financial statements were checked against original mortgages and security deeds. In point of fact, the only substantial errors demonstrated in the Commissioner's determination stem either from misinformation given by the taxpayer or by his mother or sister, except as to the value to be attributed to certain promissory notes owned by petitioner secured by real estate he sold. As to this item the agents took the full amount of the notes, which was neither arbitrary nor without support even though the Tax Court later found that 75 percent of the fact of these notes was the correct value. It was not arbitrary for the agents to consider as worth face value notes which the taxpayer had exacted when he sold the various parcels of real estate, and which he was currently collecting according to their terms, including interest of from 5 to 8 percent. The fact that at the hearing before the Tax Court credible evidence was adduced by petitioner for the first time to show that these notes were not worth full face value does not detract from the presumption of correctness that attaches to the Com-

missioner's other reasonably founded determinations. This is the normal office of such a presumption. It merely throws on the taxpayer the burden of showing with respect to each item that the Commissioner was wrong. *Goldberg v. Commissioner of Internal Revenue*, 5 Cir., 239 F. 2d 312, 319. The fact that he carried that burden with respect to the value of the notes and the inclusion of certain assets which belonged to the petitioner's mother and sister, does not destroy the presumption of correctness of the remaining determinations by the Commissioner which are not shown by the taxpayer to be wrong.

Moreover, substantially all of the increases in net worth determined by the Tax Court were supported by affirmative evidence, much of which was in the nature of financial statements made by the taxpayer to the banks during the successive years. The Tax Court's opinion indicates a most painstaking effort to sift the evidence as to the specific pieces of property held at various dates. Whenever any evidence was introduced that cast any substantial doubt on the accuracy of the agent's report that Court readily accepted such proof in favor of the taxpayer.

Petitioner next attacks several specific findings of the Tax Court as being without evidence to support them.

The three important findings are: 1. That taxpayer's claim that he had $20,000 to $22,000 in cash hidden in glass jars in the woods on the opening date of the tax period was not credible; 2. That taxpayer's contention that on the closing date taxpayer had an additional liability in the form of two notes for $85,000 to one

Senn was not credible; 3. That the secured real estate notes of taxpayer were worth 70 percent of face value.

We need not dwell long on the story of the hidden cache of money. Aside from being a story that would strain the credulity of any reasonable trier of the facts,[2] the Tax Court had before it sufficient other evidence to warrant its rejection of taxpayer's uncorroborated story. *Boyett v. Commissioner of Internal Revenue,* 5 Cir., 204 F. 2d 205; *Archer v. Commissioner of Internal Revenue,* 5 Cir., 227 F. 2d 270; *Kite v. Commissioner of Internal Revenue,* 5 Cir., 217 F. 2d 585. His income record, as disclosed by his tax returns, would not account for the saving of such an amount by January 1, 1942; the claimed cash was not included on financial statements furnished by taxpayer to the banks to establish credit as of January 1, 1942, or any subsequent statement; he was borrowing money at substantial rates of interest at the time he claims to have had this cache, such conduct being entirely inconsistent with the frugal nature demonstrated by taxpayer; there was no positive affirmative testimony as to the amount he claimed was in the jars at the opening date or how much he admitted was still there at the closing date. In light of all of these

2 Taxpayer said he put money in glass jars and buried them in the woods where he went dressed as a hunter; that no one but he knew where they were buried; that he put money in and took it out without knowing at any time how much was there; that some of the money in the jars was cash from his father's estate, although elsewhere his proof shows that he received no cash from this estate; that he put the money in the ground because he didn't trust the banks (although he did have several bank accounts); later in his testimony he said he buried it because he had an "itty-bitty" safety deposit box and kept his securities there. He did not testify as to how many jars he had buried, but stated that even down to the date of the trial he had a couple of jars still buried in the woods, although he did not know how much was in them. He did not take the agents to the hiding places or show them these jars, and of course their contents were not counted against him in the closing net worth computation.

circumstances the Tax Court was not bound to accept the uncorroborated, implausable, incoherent contention of the taxpayer as to the existence of the hidden money.

Precisely the same answer can be given to the petitioner's contention that the Tax Court erred in not believing his story that his net worth as of December 31, 1946, 1947 and 1948 should be reduced by an amount of $85,000 allegedly owed one E. R. Senn. One of the important functions of the Tax Court, as trier of the facts, is to pass on the credibility of the taxpayer as his own witness. The Court is not required to accept as true every statement made by the taxpayer even if uncontradicted. If testimony is inherently so implausible or improbable as to stretch the credulity of the Court[3]

3 This testimony is just short of fantastic: The taxpayer knew a man named Senn—all he knew about him was "just Mr. Senn is all I know." Initially, he thought he knew Senn for several years, but later said he knew him for ten or twelve years, during which time Senn lived in Augusta. Senn left Augusta some time after 1947. (The Commissioner's agents searched the city directory of Augusta for the years 1940 through to the date of hearing below, and looked in the Tax Digest for Augusta, and inquired around Augusta, but no trace of Senn could be found.) The taxpayer could not remember when he met Senn, but recalled that he lived in a rooming house that no longer existed; he did not remember the landlady's name. The taxpayer met Senn through a mutual friend who was no longer alive. Senn had no family in Augusta. Senn never worked while he was in Augusta, but he carried around a hoard of money in a suitcase because he did not like banks. However, in 1946 Senn loaned the taxpayer $55,000 and in 1947 he loaned the taxpayer an additional $30,000. The taxpayer borrowed the money because he thought he needed it; he buried the money—$85,000 at 4% interest—after he received it. However, before he buried the second loan of $30,000 he kept it for a time under some building supplies in a shop near his house. These loans were transacted in the woods and each time Senn brought along a suitcase full of money—they sat down and counted it. Senn took no security or collateral for the loan. There were two notes introduced in evidence which were the kind the taxpayer kept around the house. Both notes bear undated indorsements which read, "Paid—E. R. Senn." (no evidence was introduced to prove the signature of Senn.) The notes bore 4% interest. The $55,000 loan was allegedly received by the taxpayer in April, 1946; he buried it but removed it as he needed it. Yet, at the end of 1946 he had loans outstanding drawing interest against him of $12,391.92 and owed money on building supplies in the amount of $2,832.18. After the second loan Senn left town and never communicated with the taxpayer. However, the taxpayer, a few years

it can decline to believe it if the taxpayer's credibility is already before the Court. Here the disbelieved tale about the money in glass jars added nothing to the credibility of this witness. However, it cannot be said that Anderson's testimony was unimpeached on the Senn note. He furnished financial statements to the banks as of December, 1946, 1947 and 1948, purporting to give his assets and liabilities. No such liability as this was included in any of these statements. He thus impeached his own testimony. Furthermore his testimoney, if believed, was not sufficient to prove that he did not have a substantial part of the proceeds of the loans still buried at the end of each of the years in question, as he testified only that he buried it and removed it as he needed it. The Tax Court was not clearly in error in refusing to accept the taxpayer's contention that he had this outstanding liability.

We come next to the court's ascertainment of a 70 percent value of the notes secured by the security deeds owed by the taxpayer. Although we have stated that it was not arbitrary for the Commissioner to determine that the notes representing the sales price of houses had a value equal to their face, since taxpayer was currently collecting them, we find substantial evidence in the

later (he did not recall the date) went to Florida and looked Senn up in Miami. He paid Senn some of the money he owed him in the rooming house where he found him, but did not recall where the rooming house was located. In order to pay Senn, the taxpayer sold his securities and dug up all the money he could find. (He later testified that he obtained the money to pay Senn from a bank and, therefore, did not know how old the bills were which he used for payment.) At the time of the hearing, he did not owe Senn any more money because Senn forgave him the interest. (The taxpayer subsequently testified that he still owed Senn the interest.) None of the taxpayer's records give any indication of the purported debt and in none of his financial statements to the banks is there any statement that he owed this amount. The taxpayer did not bring Senn to the hearing below and did not produce any witnesses who knew Senn.

record of the trial that would support a value of a figure somewhat less than face. The value of these notes, of course, had a definite bearing on the annual discrepancies between reported and actual income of the taxpayer, since he must account for cash or property at its fair value if a sale or exchange was made of the real estate owned by him.

The taxpayer strenuously contends for a valuation of 30 percent, or at the most of 56 percent, on the basis of opinion evidence. Several witnesses testified that the houses that stood as security for the notes were shoddily built; that they lacked plumbing; they were in an undesirable neighborhood; that their values averaged about 56 percent of the face amount of the notes. The taxpayer testified that he sought no deficiency judgment if a purchaser defaulted.[4] One witness gave it as his opinion that the notes had a fair value of 30 cents on the dollar.

On the contrary the Commissioner points out the following facts in the record to support the Tax Court's finding of a value of 70 per cent of face value; the testimoney of petitioner's witnesses establishing a value of the security at 56 percent; the shortage of houses and the great demand existing at the time in question; houses were located near mills and army camps; the notes were being currently paid off and the payments included substantial interest payments. The Commissioner also calls attention to the fact that the one wit-

4 However petitioner does not call our attention to any testimony that he ever lost so much as a dollar of the sales price represented by the notes. He testified that rather than go through a formal foreclosure he frequently found a new purchaser who simply took over from the original maker of the notes, presumably, from taxpayer's testimony, taking on the obligation to pay the monthly notes.

ness who testified to the 30 percent valuation had no actual experience in the purchase or sale of mortgage paper and was not in Augusta or its vicinity during several of the years in question, thus challenging the weight required to be placed by the Tax Court on his opinion.

Valuation is, of course, a question of fact. It is necessarily an approximation arrived at by the trial court on such factors as reasonably bear on determining the price which would reasonably be paid by the hypothetical willing purchaser to the equally hypothetical willing seller who is under no compulsion to sell. It is not necessary that the value arrived at by the trial court be a figure as to which there is specific testimony, if it is within the range of figures that may properly be deduced from the evidence. *Archer v. Commissioner of Internal Revenue*, 5 Cir., 227 F. 2d 270, 273. Cf. *Burford-Toothaker Tractor Co. v. Commissioner of Internal Revenue*, 5 Cir., 192 F. 2d 633, 635. In the determination the Tax Court should consider all the factors, and when its finding has a basis in the record taken as a whole its determination is considered as final on appeal. *Mistrot v. Commissioner of Internal Revenue*, 5 Cir., 84 F. 2d 545, 546. Of course, opinion evidence is admissible and relevant on the question of value, but it may be given just such weight as the Tax Court may consider it worth in light of the demonstrated qualifications of the expert and when considered with the other evidence of value. It is clear that the court here gave some weight to the testimony of the one expert who gave an opinion of value; otherwise the court would have had no basis for fixing a value of less than 100 percent of the face of

the notes. We cannot say that it should have given more or less weight than it did in view of the other circumstances such as the current collectibility of the notes, the shortage of houses during the years in question and the fact that the taxpayer had himself exacted promises to pay these several amounts as the purchase price for the houses during the very years in question, a fact that is certainly of evidentiary value. It was the Tax Court's duty to weigh the evidence and draw the inferences from the facts and declare the value. We cannot say that its valuation at 70 percent of the face amount of the notes was clearly erroneous.

Petitioner's contention that there was no support for the Tax Court's finding of a substantial amount of investment in 1946 for houses under construction cannot prevail. There was a careful investigation by the agents as to the date of acquisition of the many properties owned by taxpayer and, based largely on his ownership in 1947 and 1948 of newly constructed houses, they determined that at December 31, 1946 he had $48,000 in finished and partially finished construction. This determination of the Commissioner was not arbitrary or unreasonable and the taxpayer had the burden of disproving it. He made no effort to do so. In fact the agent testified that when he explained the item to Anderson he did not object to it.[5]

We next come to the important fraud issue. Of course the courts have repeatedly held that the mere omission

5 "Q. Mr. Anderson was satisfied with those figures at the time was he not?
A. He was to the extent he didn't raise any objection to it when we asked him whether or not this was the amount, and he went along with it."

of reportable income is not of itself sufficient to warrant a finding of fraud in an income tax case. *Bryan v. Commissioner of Internal Revenue,* 5 Cir., 209 F. 2d 822; *Goldberg v. Commissioner of Internal Revenue,* 5 Cir., 239 F. 2d 216, 320. However, repeated understatements in successive years when coupled with other circumstances showing an intent to conceal or misstate taxable income present a basis on which the Tax Court may properly infer fraud. The attitude and testimony of the taxpayer as a witness at the trial may, of course, be considered by the court in determining how much weight is to be given to his testimony. Here the fact that the court rejected as fabricated the taxpayer's testimony both as to the hidden glass jars of money at the opening date and the two notes to E. R. Senn at the closing date may well have caused the court to look with an exceedingly dim view on the explanation offered by Anderson and his motives and intent in failing to keep books, in transacting most of his business by cash and in destroying cancelled checks.[6] We think this case falls well within the reasoning of the court in *Bryan v. Commissioner of Internal Revenue*:

> ". . . As a general rule, the mere failure to report income, considered along, is insufficient to establish fraudulent intent. However, each case must be considered in the light of its own particular facts. Thus considering the present case, we do not hesitate to affirm the finding of the Tax Court. The taxpayer maintained partial records of his income from one or more of his enterprises, but at the same time he main-

6 For a case in which the court comments on the taxpayer's "questionable testimony" as being an element of proof of fraud, see Bond v. Commissioner of Internal Revenue, 4 Cir., 232 F. 2d 822.

> tained no records at all of other sources of income. This method of bookkeeping is designed to conceal the true facts concerning taxable income. For a period extending over eight years he habitually reported only a portion of his income and, during the years under review, only a small fraction of such income. This course of conduct on the part of the taxpayer over such an extended period of time warrants the finding that the false returns were filed with the intent to evade tax."
> *Bryan v. Commissioner of Internal Revenue*, 5 Cir., 209 F. 2d 822, 828.

We conclude that the finding by the Tax Court that part of the definiencies for the years 1942, 1943, 1945 and 1946 was due to fraud was not clearly erroneous.

The conclusion of the fraud issue, as conceded by the petitioner, answers his contention as to liability for 1942 and 1943, and the application of Section 6 of the Current Tax Payment Act of 1943, both of which issues must be decided adversely to petitioner.

We have considered the other contentions of the petitioner, both as to the treatment of sales of houses as being sales of property held primarily for sale to customers and as to denial of the installment sales treatment in the sale of some of the properties, but do not find that the Tax Court erred in its decision as to these issues. So too as to the remaining questions presented by petitioner on brief. We have considered each of these contentions but find them without merit.

It appears that mathematical errors have occurred in the computations of the Tax Court. In order that the taxpayer's interests may be fully protected against such

errors, it is ordered that the Tax Court's decision is AFFIRMED in all particulars except as to the computations of the income tax thereon. For a correct determination of these matters the case is REMANDED to the Tax Court.

HUTCHESON, Chief Judge, concurring in part and dissenting in part:

I concur in most of what is said in the opinion of the majority and in its affirmance of the Tax Court's decision, except (1) as to the fair market value of the security deeds, and (2) as to the capital gains issue. I agree, too, with the rejection by the majority of the petitioners' contention that the determinations of increases in petitioners' net worth were so arbitrary and unreliable as to withdraw from the determinations all presumption of correctness.

I disagree, however, with the reason given for the rejection, that "The chief fallacy of this contention lies in its major premise"; and with the statement that "The determinations made by the Commissioner were neither arbitrary nor unreasonable under the circumstances of the investigation."

I particularly disagree with the apparent assumption of the opinion that because the revenue agents found it difficult under the circumstances to reach correct conclusions, they and the commissioner were relieved of the obligation of making reasonable determinations as near correct as reasonably possible.

Under the undisputed facts in this case and the findings of the Tax Court, it is quite clear to me that certain

of the determinations were not only incorrect but were arrived at under the application of the principle implicit in the majority opinion that, under the circumstances of this case, it was the right, if not the duty, of the agents and the commissioner to throw the book at the taxpayers by making extreme determinations leaving them to avoid their effect if they can. I do not know of a single decision which has so held. Indeed, I regard it as settled that the prima facie presumption which attends the determinations of the commissioner is based upon a principle the exact contrary of this. This principle is that he has acted fairly and reasonably in making his determinations and is prepared to support them with evidence if credible evidence, that they are incorrect, is offered.

Acting in this case in accordance with the guiding influence of the correct principle, instead of blindly following the determinations of the commissioner, the Tax Court in the main, after a painstaking and searching consideration of the record as a whole, accepted some and rejected others of his determinations, basing its findings on its view of the state of the evidence.

Because it did so, I agree with the majority, except as to the two matters referred to above and hereafter briefly discussed, that its findings and conclusions are not clearly erroneous and should be affirmed.

Upon the first question, the value of the security deeds, I am of the firm opinion that the majority, in stating on page 4 of the opinion that "It was not arbitrary for the agents to consider as worth face value notes which the taxpayer had exacted when he sold the

various parcels of real estate",[1] acted upon a patently unsound premise.

I am of the equally firm opinion that the Tax Court gravely erred when, without any testimony to the contrary and in the face of the testimony of all the witnesses as to their value, though conceding that the commissioner had erroneously determined that their fair market value was their face, it reached up into the air to pluck a figure down to which no one testified and which a mere reading of the record will show is not only unsupported by, but is contrary to, all of the testimony.

It will serve no useful purpose for me to set out this testimony. It is sufficient to say: that the statements in the brief of the petitioner as to the state of the evidence are completely accurate, that neither the brief of the taxpayer, the opinion of the Tax Court, nor that of the majority of this court in any manner contradicts these statements; and that, when the nature and character of the property are considered, there is not only no reasonable basis but no basis whatever for a finding that the fair market value of the security deeds as a whole was 70 percent of their face, none that they exceeded 50 percent of their face.

As to the second question, the claim of the petitioners to capital gains treatment, a matter which the majority opinion does not even treat at all, except by a sweeping dictum, I think it completely clear that, upon this record

1 "As to this item, the agents took the full amount of the notes, which was neither arbitrary nor without support even though the Tax Court later found that 75 percent of the face of these notes was the correct value. It was not arbitrary for the agents to consider as as worth face value notes which the taxpayer had executed when he sold the various parcels of real estate and which he was currently collecting according to their terms, including interest of from 5 to 8 percent."

and the controlling cases from this court, the finding of the Tax Court is mere fiating without any support in the evidence, indeed directly contrary to it.

In support of their claim that they were entitled to capital gains treatment on the sale of the properties in question, petitioners testified without contradiction that the 58 pieces of property in question were acquired for rental purposes and that they were not held for sale to customers in the regular course of their business.

The Commissioner introduced no evidence whatever to the contrary. The Tax Court, without pointing to any evidence in support of its conclusion except that the petitioners did have other properties which were held for sale, lumped all of their properties together, though some were and some were not held for sale, and by its mere say so brushed away the testimony of petitioners which was not contradicted and was not shown in any manner to be unreliable.

It seems to me that the decision of the Tax Court and of the majority on this issue runs directly counter to the reasoning and the decisions of this court in *Robinson v. Commissioner*, 183 F (2) 739, Cf. *Hightower v. Commissioner*, 187 F (2) 535, and *Burford v. Commissioner*, 193 F (2) 633, and in *Smith v. Dunn*, 224 F (2) 353, *Foran v. Commissioner*, 165 F (2) 705, and other cases from this court, particularly *Ross v. Commissioner*, 227 F (2) 265; *Consolidated Naval Stores v. Commissioner*, 227 F (2) 923, and *Goldberg v. Commissioner*, 223 F (2) 709.

I dissent from the affirmance of the Tax Court's decision on these two issues.

Petitioners' Exhibit "18"

L. T. ANDERSON
AUGUSTA, GEORGIA
CAPITAL GAINS
SALES OF RENTAL PROPERTY AND UNIMPROVED LAND
1942

GEORGIA	Date Acquired	Selling Price		Cost	Depreciation	Gain or (Loss)
G. Thompson			L	$ 300.00		
822 Chafee Avenue	1940	$ 2,500.00	B	$ 1,950.00	$ 29.25	$ 279.25
This property was deeded 8-1-41 on Loan 1940						
		$ 2,500.00		$ 2,250.00	$ 29.25	$ 279.25
SOUTH CAROLINA						
Z. Asbell			L	$ 65.00		
Druid Hills	1935	$ 2,250.00	B	$ 750.00	$ 191.25	$ 1,626.25
R. V. Keeler						
Brookside Lot	1939	300.00	L	137.50		162.50
D. Heng			L	800.00		
Belle Place	1925	3,500.00	B	2,800.00	630.00	530.00
E. A. Weathersbee			L	30.00		
Druid Hills	1937	1,750.00	B	766.67	126.50	1,079.83
		$ 7,800.00		$ 5,349.17	$ 947.75	$ 3,398.58
		1943				
GEORGIA						
J. P. Norris	1942	$ 2,600.00	L	$ 2,200.00		$ 400.00
Skinner Road						
Mrs. S. Pollard			L	100.97		
420 Sand Bar Ferry Road	1942	3,000.00	B	2,000.00	$ 30.00	929.03
		$ 5,600.00		$ 4,300.97	$ 30.00	$ 1,329.03
		1944				
GEORGIA						
Copeland			L	$ 200.00		
520 Tuttle Street	1938	$ 1,850.00	B	$ 1,425.00	$ 235.12	$ 460.12

CAPITAL GAINS
SALES OF RENTAL PROPERTY AND UNIMPROVED LAND
1945

GEORGIA	Date Acquired	Selling Price		Cost	Depreciation	Gain or (Loss)
Mrs. N. Eubanks			L	$ 700.00		
1017 Chafee Avenue	1929	$ 3,550.00	B	2,500.00	$1,162.50	$ 1,512.50
Mrs. E. Adams			L	700.00		
1019 Chafee Avenue	1931	3,550.00	B	3,000.00	1,012.50	862.50
R. W. Brown			L	73.98		
1111 Emmett Street	1928	2,250.00	B	1,200.00	594.00	1,570.02
W. P. Carr			L	73.98		
1101 Emmett Street	1928	2,500.00	B	1,200.00	594.00	1,820.02
Mattie Butts			L	100.00		
549 Calhoun Street	1943	1,500.00	B	700.00	31.50	731.50
Jas. H. Johnson			L	200.00		
1408 First Avenue	1938	3,100.00	B	1,250.00	243.75	1,893.75
G. F. Linnenhokl			L	73.98		
1107 Emmett Street	1928	2,250.00	B	1,400.00	693.00	1,469.02
		$18,700.00		$13,171.94	$4,331.25	$ 9,859.31

SOUTH CAROLINA						
Sim Corley			L	$ 275.00		
Druid Hills	1935	$ 3,250.00	B	750.00	$ 258.75	$ 2,483.75
C. L. Busbee			L	15.00		
Druid Hills	1935	2,300.00	B	750.00	258.75	1,793.75
Geo. Cheely			L	45.00		
Druid Hills	1937	2,100.00	B	766.67	195.50	1,483.83
W. M. Cook			L	15.00		
Druid Hills	1935	2,100.00	B	750.00	195.50	1,530.50
C. Crenshaw			L	15.00		
Druid Hills	1935	2,350.00	B	750.00	258.75	1,843.75
Mrs. A. Timmerman			L	90.00		
Druid Hills	1937	2,250.00	B	766.67	195.50	1,588.83
C. M. Hoffman			L	15.00		
Druid Hills	1937	1,850.00	B	766.67	258.75	1,327.08
B. Richardson			L	45.00		
Druid Hills	1937	1,850.00	B	766.67	195.50	1,233.83
J. R. Richardson			L	15.00		
Druid Hills	1937	1,250.00	B	766.67	195.50	663.83
Mrs. D. Cushman						
Druid Hills	1935	350.00	L	20.00		330.00
Thos. A. Folk			L	137.50		
Brookside	1939	3,500.00	B	2,833.34	467.50	996.66
W. B. Timmerman						
Druid Hills	1939	100.00	L	45.00		55.00
J. S. Mansfield			L	137.50		
Brookside	1939	3,500.00	B	2,833.33	467.50	996.67
Fred S. Trulock			L	137.50		
Brookside	1939	3,500.00	B	2,833.34	467.50	996.66
		$30,250.00		$16,340.86	$3,415.00	$17,324.14

CAPITAL GAINS
SALES OF RENTAL PROPERTY AND UNIMPROVED LAND
1946

GEORGIA	Date Acquired	Selling Price		Cost	Depreciation	Gain or (Loss)
R. L. Williams			L	$ 100.97		
422 Sand Bar Ferry Rd.	1943	$ 3,000.00	B	2,000.00	$ 150.00	$ 1,049.03
L. & W. Merchant			L	114.69		
412 Sand Bar Ferry Rd.	1943	3,000.00	B	2,000.00	150.00	1,035.31
M. Hughes			L	50.00		
1921 Heckle Street	1934	3,500.00	B	2,500.00	862.50	1,812.50
S. Hillman			L	260.00		
408 Walker Street	1939	3,500.00	B	2,500.00	506.25	1,246.25
B. Sheppard			L	73.98		
1109 Emmett Street	1928	2,500.00	B	1,100.00	577.50	1,903.52
W. Peebles, Jr.			L	1,000.00		
Jack Dempsey Place	1943	4,500.00	B	3,500.00		.00
		$20,000.00		$15,199.64	$2,246.25	$ 7,046.61
SOUTH CAROLINA						
G. C. Reese						
Forest Place	1941	$ 250.00	L	$ 35.20		$ 214.80
Ola B. Thompson			L	137.50		
Brookside	1939	3,500.00		2,833.33	$ 552.50	1,081.67
H. E. Corley						
Druid Hills	1935	296.80	L	55.00		241.80
H. Mullen, Jr.		100.00		.00		100.00
N. Jolley			L	137.50		
Brookside	1939	5,250.00	B	2,833.33	552.50	2,831.67
D. Crapps						
Forest Place	1941	300.00	L	13.20		286.80
		$ 9,696.80		$ 6,045.06	$1,105.00	$ 4,756.74

CAPITAL GAINS
SALES OF RENTAL PROPERTY AND UNIMPROVED LAND
1947

GEORGIA	Date Acquired	Selling Price		Cost	Depreciation	Gain or (Loss)
C. Williams			L	$ 87.50		
338 Sand Bar Ferry Rd.	1942	$ 3,800.00	B	2,000.00	$ 270.00	$ 1,982.50
Mrs. P. Peebles			L	93.18		
334 Sand Bar Ferry Rd.	1942	5,700.00	B	2,000.00	270.00	3,876.82
J. Scott			L	100.35		
410 Sand Bar Ferry Rd.	1942	4,000.00	B	2,000.00	270.00	2,169.65
M. Daniels			L	91.39		
424 Sand Bar Ferry Rd.	1943	6,000.00	B	2,000.00	210.00	4,118.61
B. E. Lewis			L	62.50		
1352 Cooper Street	1938	1,000.00	B	437.50	111.56	611.56
J. H. Thompson			L	125.00		
1348-50 Cooper Street	1938	2,000.00	B	875.00	223.13	1,223.13
Mrs. W. Barnes			L	62.50		
1354 Cooper Street	1938	1,000.00	B	437.50	111.56	611.56
W. J. Clements			L	91.39		
402 Sand Bar Ferry Rd.	1942	6,000.00	B	2,000.00	270.00	4,178.61
R. L. Jackson			L	91.39		
404 Sand Bar Ferry Rd.	1942	4,000.00	B	2,000.00	270.00	2,178.61
Roy Lovett			L	91.39		
418 Sand Bar Ferry Rd.	1942	3,800.00	B	2,000.00	270.00	1,978.61
		$37,300.00		$16,646.59	$2,276.25	$22,929.56
SOUTH CAROLINA						
J. R. Smith			L	$ 15.00		
Druid Hills	1935	$ 1,850.00	B	750.00	$ 303.75	$ 1,388.75
Harry Cosgrove			L	150.00		
116 Buena Vista	1935	7,250.00	B	3,500.00	805.00	4,405.00
H. S. Riordan			L	300.00		
54 Bluff Avenue	1937	5,250.00	B	2,300.00	546.25	3,196.25
		$14,350.00		$ 7,015.00	$1,655.00	$ 8,990.00

1948

GEORGIA						
V. Massey			L	$ 91.39		
406 Sand Bar Ferry Rd.	1942	$ 6,000.00	B	2,000.00	$ 330.00	$ 4,238.61
C. Barns						
402 Sand Bar Ferry Rd.	1942	6,000.00	B	2,000.00		4,000.00
P. Martin			L	91.39		
414 Sand Bar Ferry Rd.	1942	6,000.00	B	2,000.00	330.00	4,238.61
		$18,000.00		$ 6,182.78	$ 660.00	$12,477.22
SOUTH CAROLINA						
J. Siegler, Jr.						
Druid Hills	1935	$ 100.00		$ 75.00		$ 25.00
J. Simpkins		216.66				216.66
		$ 316.66		$ 75.00		$ 241.66

Petitioners' Exhibit "19"

L. T. ANDERSON
AUGUSTA, GEORGIA
HOUSES CONSTRUCTED – FOR RENTAL

SAND BAR FERRY ROAD		1940	1941	1942	1943	1944	1945	1946	1947	1948
334-336	Peeples			$ 2,000.00	$ 2,000.00	$ 2,000.00	$ 2,000.00	$ 2,000.00		
338	Williams			2,000.00	2,000.00	2,000.00	2,000.00	2,000.00		
400-402	Clements			2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	$ 2,000.00	
404	Jackson			2,000.00	2,000.00	2,000.00	2,000.00	2,000.00		
406-408	Massey			2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	
410	Scott			2,000.00	2,000.00	2,000.00	2,000.00	2,000.00		
412	Merchant				2,000.00	2,000.00	2,000.00			
414-416	Martin			2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	
418	Lovett			2,000.00	2,000.00	2,000.00	2,000.00	2,000.00		
420	Pollard			2,000.00						
422	Williamson				2,000.00	2,000.00	2,000.00			
424-426	Daniels				2,000.00	2,000.00	2,000.00	2,000.00		
				$18,000.00	$22,000.00	$22,000.00	$22,000.00	$18,000.00	$ 6,000.00	–0–

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In the Supreme Court of the United States

OCTOBER TERM, 1957

LEWIS THURSTON ANDERSON AND CLYDE VELMA ANDERSON, PETITIONERS,

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

CHARLES K. RICE,
Assistant Attorney General.

HARRY BAUM,
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Department of Justice,
Washington 25, D. C.

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In the Supreme Court of the United States

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court (R. 901-960) are not officially reported. The opinion of the Court of Appeals (Pet. 28-45) is reported at 250 F. 2d 242.

JURISDICTION

The judgment of the Court of Appeals was entered on December 6, 1957. A petition for rehearing was denied on December 30, 1957. The petition for a writ of certiorari was filed on March 27, 1958. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether the record warrants the Tax Court's finding, affirmed by the court below, that certain secured notes owned by the taxpayer had an average fair market value of 70 percent of their face amounts.

2. Whether the record warrants the Tax Court's finding, also affirmed by the court below, that certain property sold by the taxpayer was held primarily for sale to customers in the ordinary course of business, and that consequently the sales profits were taxable as ordinary income rather than as capital gain.

STATUTES INVOLVED

Internal Revenue Code of 1939:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

* * * * *

(26 U.S.C. 1952 ed., Sec. 22.)

SEC. 111. DETERMINATION OF AMOUNT OF, AND RECOGNITION OF, GAIN OR LOSS.

* * * * *

(b) *Amount Realized.*—The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

* * * * *

(26 U.S.C. 1952 ed., Sec. 111.)

SEC. 117. CAPITAL GAINS AND LOSSES.

(a) [as amended by Sec. 115(b), Revenue Act of 1941, c. 412, 55 Stat. 687, and Sec. 151(a), Revenue Act of 1942, c. 619, 56 Stat. 798] *Definitions.*—As used in this chapter—

(1) *Capital assets.*—The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l), * * *, or real property used in the trade or business of the taxpayer;

* * * * *

(j) [as added by Sec. 151(b), Revenue Act of 1942, *supra*] *Gains and Losses From Involuntary Conversion and From the Sale or Exchange of Certain Property Used in the Trade or Business.*—

(1) *Definition of property used in the trade or business.*—For the purposes of this subsection, the term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23 (l), held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

* * * * *

(26 U.S.C. 1952 ed., Sec. 117.)

STATEMENT

The pertinent facts, as found by the Tax Court (R. 903-929), may be summarized as follows:

The taxpayer, Lewis Thurston Anderson, commenced acquiring real estate in and around Augusta, Georgia, in 1917. His earliest acquisitions were for the purpose of producing rental income. The acquisition of real estate by the taxpayer was a continuous process, at least from 1926 on, and prior to 1946 taxpayer acquired a tract of at least 50 acres on the Sand Bar Ferry Road outside of the City of Augusta. He subdivided the Sand Bar Ferry tract into 60 building lots and constructed houses on it, some of which were initially built for rental and some for sale.

These latter houses, and three more that he had on hand at December 31, 1948, were the only houses that

the taxpayer constructed primarily for sale. They were built by the taxpayer in order to enable him to dispose of the land which was the back part of the tract. (R. 907.)

In the years 1942 to 1948, inclusive, the taxpayer, in addition to sales of other property, sold parcels of real estate and unimproved land as listed below. (R. 907-908.) The aggregate numbers of parcels, selling prices, costs, amounts of depreciation and gains were as follows (R. 908):

Year	No. Parcels	Selling Price	Cost	Depreciation	Gain
1942.....	5	$10,300.00	$ 7,599.17	$ 977.00	$ 3,677.83
1943.....	2	5,600.00	4,300.97	30.00	1,329.03
1944.....	1	1,850.00	1,625.00	235.12	460.12
1945.....	21	48,950.00	29,512.80	7,745.25	27,183.45
1946.....	12	29,696.80	21,244.70	2,351.25	11,803.35
1947.....	13	51,650.00	23,661.59	3,931.25	31,919.66
1948.....	5	18,316.66	6,257.78	660.00	12,718.88

Each of these parcels had been held by the taxpayer for more than six months. Some of the parcels were improved and some were unimproved. Each of the parcels that had a house on it had been rented before it was sold. In almost every case, the purchaser or a relative of the purchaser approached the taxpayer with an offer to purchase the property. The taxpayer sometimes paid a commission on such sales to persons who were not real estate agents. He sold to anyone who wanted to buy. He sometimes sold without receiving a down payment. (R. 908.)

On his sales of real estate the taxpayer received from the purchasers security deeds to secure notes for the unpaid portion of the purchase price. The notes bore interest at varying rates from 5 percent to 8 percent. (R. 911-912.) In some instances the property was sold with no down payment or with a small down payment.

In other instances substantial down payments were made. (R. 940.) At the close of each of the years listed below the taxpayer owned security deeds acquired in connection with real estate sales in the several counties listed in the numbers and face amounts as follows (R. 912):

Year	No.	Aiken County	No.	Richmond County	No.	Jefferson County	Totals
1940.....	0	.....	1	$ 1,926.00	1	$425.00	$ 2,351.00
1941.....	0	.....	1	1,710.00	1	425.00	2,135.00
1942.....	2	$ 3,438.62	1	1,000.00	1	425.00	4,863.62
1943.....	2	3,307.54	2	3,132.97	0	.....	6,440.51
1944.....	2	3,130.70	2	3,456.45	0	.....	6,587.15
1945.....	15	29,330 67	8	14,464.97	0	.....	43,795.64
1946.....	17	32,056.18	13	26,744.30	1	107.00	58,907.48
1947.....	16	27,854.72	31	99,600.56	1	107.00	127,562.28
1948.....	15	25,325.87	39	140,574.05	0	.....	165,899.92

During the years in question many of the security deeds covering properties sold by the taxpayer were satisfied (R. 910.)

Some of the security deeds were on property in the Sand Bar Ferry tract. That tract was outside of the city limits and the houses built thereon were not subject to the city building code. They were, in many respects, sub-standard in construction and materials and had no baths or other sanitary facilities. The streets in the area were unpaved, and there were no street lights. (R. 912.)

No real estate firm in Augusta has ever sold any of the taxpayer's houses in the Sand Bar Ferry Road area. The houses could not qualify for F.H.A. loans and savings and loan associations would not make improvement loans on the properties (R. 913.)

Houses owned by the taxpayer in Augusta, Georgia, some of which he sold in the taxable years, and on which he took back notes secured by security deeds, for the most part were also of sub-standard construction. Some

of them had been built 50 or 60 years ago to rent at $15 to $20 per month. Some were rented at monthly rentals of from $4 to $7. The taxpayer's properties, generally, were properties that were hard to finance. (R. 913.)

The average of the value of the real estate underlying the security deeds which secured the notes, as stated by the witnesses, was over 56 percent of the face amount of the notes (R. 940), and the taxpayer's evidence shows that within the years in which sales were made he received substantial collections on the notes (R. 941).

The court below affirmed (Pet. 36-39) the findings of fact made by the Tax Court that: (1) The secured notes held by the taxpayer on properties that were sold by him had a fair market value of 70 percent of their face amounts (R. 913); and (2) the real estate sold by the taxpayer was property held by him primarily for sale to customers in the ordinary course of his business (R. 908-909). Judge Hutcheson, dissenting, was of the view that the determinations of the Tax Court as to value of the notes and as to the purposes for which the taxpayer held his real estate before sale were clearly erroneous. (Pet. 42-45.)

ARGUMENT

This case presents only factual issues. The Tax Court's determination was properly affirmed by the Court of Appeals, and the concurrent findings of both courts below are entitled to finality here. There is no conflict, nor any other reason for further review.

1. It is well settled that valuation of property presents an issue of pure fact, and that the trial court's

determination should not be disturbed if it has a basis in the record. *Elmhurst Cemetery Co.* v. *Commissioner*, 300 U.S. 37; *Olson* v. *United States*, 292 U.S. 246; *Plaut* v. *Munford*, 188 F. 2d 543 (C.A. 2d). In the Tax Court the Commissioner contended that certain purchase money notes owned by the taxpayer and secured by real estate he sold were worth 100 per cent of their face amount, while the taxpayer contended that they were worth only 30 percent. (R. 939.)[1] The Tax Court, on the basis of all the evidence, found that the secured notes were worth on the average 70 percent of their face amount (R. 941), and the court below agreed (Pet. 36-39).

In valuing secured obligations the two principal guides are (1) the value of the security underlying the obligation, and (2) whether the secured obligations were income producing. See, *e.g.*, *Rogers* v. *Helvering*, 107 F. 2d 394, 396 (C.A. 2d); *Fox River Paper Corp.* v. *United States*, 165 F. 2d 639, 640 (C.A. 7th). Further, all other relevant evidence should be considered, as was done by the Tax Court in this case (R. 941). *Olson* v. *United States*, 292 U.S. 246; *F. A. Gillespie & Sons Co.* v. *Commissioner*, 154 F. 2d 913 (C.A. 10th), certiorari

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[1] On his sales of real estate, taxpayer received from his purchasers notes for the unpaid portion of the sales price, secured by mortgages (security deeds) on the property sold. (R. 911-912.) The taxpayer's deficiencies in income tax were determined by the net-worth plus expenditures method of determining income. (Pet. 31-33.) The value of the secured notes has a bearing on the discrepancies between reported and actual income of the taxpayer, since he was required to account for cash and for property at its fair market value, received on the sale of his real estate. Section 111(b) of the Internal Revenue Code of 1939, *supra*, p. 3.

denied, 329 U.S. 781. Here, the taxpayer's own witnesses testified that the security underlying the notes was worth more than 56 percent of their face amounts, and the Tax Court in effect so found. (R. 940.) In addition, the following factors, among others in the record, support the Tax Court's valuation of the secured obligations: The obligations were being currently paid and were producing income (Joint Exs. 5-L, 6-M, 7-N; Ex. 27; Pet. 36-37, R. 911-912, 941, 956); during the taxable years they were being fully satisfied and of the numerous obligations the taxpayer owned it was necessary for him to make only one repossession (see Joint Exs. 5-L, 6-M, 7-N; Pet. 36); the taxpayer exacted promises to pay the face amounts of the obligations during the very years in question (Pet. 39); and the value of the security was worth, in some instances, much more than the face amount of the obligation.

The Tax Court was not obliged, as taxpayer insists it was, to accept the testimony of the one witness who testified that the notes were worth only 30 cents on the dollar.[2] The Tax Court is not bound to accept opinion testimony of expert witnesses, but may and should exercise its own independent judgment on the basis of all the evidence before it. *Sartor* v. *Arkansas Gas Corp.*, 321 U.S. 620, 627-628; *Dayton P. & L. Co.* v. *Commissioner*, 292 U.S. 290, 299; *Burford-Toothaker Tractor Co.* v. *Commissioner*, 192 F. 2d 633, 635 (C.A. 5th), certiorari denied, 343 U.S. 941. Here, as the court below noted (Pet. 37-39), there was evidence contradicting the conclusion of the taxpayer's witnesses and supporting

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[2] This witness had no actual experience in the purchase or sale of mortgage paper, and was not in Augusta or its vicinity during the years in issue. (R. 357-362; Pet. 37-38.)

the finding of the Tax Court—a feature which alone suffices to distinguish the case from *Nichols* v. *Commissioner*, 44 F. 2d 157 (C.A. 3d), upon which the taxpayer relies (Pet. 15, 19-20).

Nor is the decision below in conflict, as taxpayer asserts (Pet. 15), with *Miller* v. *United States*, 235 F. 2d 553 (C.A. 6th). In that case the Sixth Circuit held (p. 556) that it was error for the trial court to base its finding on the value of mortgage notes *solely* on the fact that some were satisfied in years subsequent to the years in question. In the present case the obligations were being satisfied and payments were made on them during the very years in issue; in addition, as previously noted, there are other factors which the Tax Court considered and which support its valuation finding.

2. The second question raised by the petition (Pet. 20-24) concerns the oft-litigated issue of whether sales profits are taxable as ordinary income or as capital gains. Section 117(a) and (j) of the Internal Revenue Code of 1939, *supra*, pp. 3-4, excludes from the definition of capital assets "property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business." Whether particular property falls within the excepted category presents a question of fact in each case, no single evidentiary factor being decisive;[3] accordingly, this Court has repeatedly declined to review similar cases raising substantially the same issue.[4]

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[3] See, *e.g.*, *Simonsen Industries* v. *Commissioner*, 243 F. 2d 407 (C.A. 7th); *Gamble* v. *Commissioner*, 242 F. 2d 586 (C.A. 5th).

[4] See, *e.g.*, *Zack* v. *Commissioner*, 245 F. 2d 235 (C.A. 6th), certiorari denied, 355 U.S. 823; *S.E.C. Corp.* v. *United States*, 241 F. 2d 416 (C.A. 2d), certiorari denied, 354 U.S. 909; *Harry Slatkin Builders* v. *Commissioner*, 235 F. 2d 189 (C.A. 6th), certiorari de-

The taxpayer contended in the courts below and contends here (Pet. 21) that the real estate that was rented prior to sale was not held for sale to his customers and that, therefore, he is entitled to the capital gains tax rates on the gains from those sales. But the record here warrants the Tax Court's finding that the real estate in issue was held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business of buying and selling real estate. (R. 908-909.) Briefly stated, the record shows that the taxpayer was, during and prior to the years in question, in the business of buying and selling real estate. (R. 905-908, 946-947.) During the taxable years the taxpayer sold both property concededly held for sale and property that was rented prior to sale. (R. 454, 947.) The sales of both types of property were continuous, regular and substantial. Thus, during the years 1946 through 1948 the taxpayer sold at least 50 parcels of real estate; of these, 20 parcels were concededly held for sale and 30 parcels were those rented previous to sale. (R. 908, 947.) Moreover, although the taxpayer testified that he originally acquired the properties in question for rental purposes (R. 447), he also testified that during the taxable years he held those properties for sale (R. 448).

Since determination of this question depends upon the particular record made before the trial court, the taxpayer's contention (Pet. 20, 22-24) that the decision below is contrary to the decisions in *Curtis Co.* v. *Commissioner*, 232 F. 2d 167 (C.A. 3d), and *Victory*

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nied, 352 U.S. 928; *King* v. *Commissioner*, 189 F. 2d 122 (C.A. 5th), certiorari denied, 342 U.S. 829; *Shearer* v. *Smyth*, 221 F. 2d 478 (C.A. 9th), certiorari denied, 350 U.S. 840; *Rubino* v. *Commissioner*, 186 F. 2d 304 (C.A. 9th), certiorari denied, 342 U.S. 814.

Housing No. 2 v. *Commissioner*, 205 F. 2d 371 (C.A. 10th), is plainly without merit.[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.
CHARLES K. RICE,
Assistant Attorney General.
HARRY BAUM,
MELVIN L. LEBOW,
Attorneys.

APRIL 1958.

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[5] As the Tax Court noted (R. 948-949) there was, in this case, no evidence that the taxpayer had segregated properties for the definite purpose of holding them for investment and that he had embarked merely on a program of liquidation. In both *Curtis Co.* v. *Commissioner*, *supra*, and *Victory Housing No. 2* v. *Commissioner*, *supra*, the courts held that there was abundant evidence to show that the axpayers were selling property merely to liquidate an investment.

The taxpayer's incidental contention (Pet. 22), that the Tax Court ignored his testimony (citing *A. & A. Tool & Supply Co.* v. *Commissioner*, 182 F. 2d 300 (C.A. 10th)), is likewise without merit. The Tax Court specifically relied (R. 948) on the taxpayer's testimony that he held the properties in issue for sale. Additionally, there was abundant other evidence in the record, such as the continuity, number, frequency and substantiality of sales, which the Tax Court relied on for its findings. (R. 946, 948.)

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